Assembly
California Legislature

ASSEMBLY COMMITTEE ON
PUBLIC SAFETY
REGINALD BYRON JONES-SAWYER, SR., CHAIR
ASSEMBLYMEMBER, FIFTY-NINTH DISTRICT

AGENDA

9:00 a.m. – April 5, 2016
State Capitol, Room 126

Item	Bill No. & Author	Counsel/ Consultant	Summary
1.	AB 1571 (Lackey)	Mr. Billingsley	Vehicles: driving under the influence: alcohol abuse programs.
2.	AB 1675 (Mark Stone)	Ms. Uribe	Juveniles: prostitution.
3.	AB 1760 (Santiago)	Mr. Billingsley	Human trafficking.
4.	AB 1761 (Weber)	Ms. Uribe	Human trafficking: victims: affirmative defense.
5.	AB 1829 (Levine)	Mr. Caswell	Vessels: operation under the influence of alcohol or drugs: chemical testing.
6.	AB 1848 (Chiu)	Mr. Dean	DNA evidence.
7.	AB 1877 (Linder)	Ms. Uribe	Lewd or obscene conduct.
8.	AB 1945 (Mark Stone)	Ms. Uribe	Juveniles: sealing of records.
9.	AB 1951 (Salas)	Mr. Pagan	Crimes: animal cruelty.
10.	AB 1962 (Dodd)	Mr. Billingsley	Criminal proceedings: mental competence.
11.	AB 1993 (Irwin)	Mr. Caswell	Corporate law enforcement contacts.

12.	AB 2147 (Eggman)	Mr. Caswell	Vehicles: impoundment: prostitution.
13.	AB 2169 (Travis Allen)	Mr. Dean	Drug paraphernalia retailers.
14.	AB 2199 (Campos)	Mr. Caswell	PULLED BY AUTHOR.
15.	AB 2205 (Dodd)	Ms. Uribe	Supervised persons: credits.
16.	AB 2228 (Cooley)	Mr. Pagan	Code enforcement officers.
17.	AB 2278 (Linder)	Mr. Billingsley	Animal control: seizure of animals: costs.
18.	AB 2295 (Baker)	Ms. Uribe	Restitution for crimes.
19.	AB 2387 (Mullin)	Mr. Dean	Vehicle equipment: counterfeit and nonfunctional airbags.
20.	AB 2390 (Brown)	Mr. Dean	Juveniles: honorable discharge: release from penalties.
21.	AB 2457 (Bloom)	Mr. Dean	Autopsy: electronic image systems.
22.	AB 2459 (McCarty)	Mr. Caswell	Firearms dealers: conduct business.
23.	AB 2495 (Eggman)	Mr. Billingsley	Controlled substances.
24.	AB 2624 (Cooper)	Mr. Pagan	Peace officers: community policing: report.
25.	AB 2721 (Rodriguez)	Mr. Dean	Elder and dependent adult fraud: informational notice.

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Date of Hearing: April 5, 2016
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1571 (Lackey) – As Amended March 28, 2016

SUMMARY: Requires the court to consider a blood alcohol concentration (BAC) of .08 or more, in combination with the presence of specified drugs, as an aggravating factor that may justify enhancing the terms and conditions of probation, for first time driving under the influence (DUI) offenders. Specifically, **this bill**:

1) Requires the court to consider a BAC of 0.08 percent or more, in combination with the presence of a Schedule I or II controlled substance, as defined the United States Code, as an aggravating factor in sentencing for first time DUI offenders.

2) Specifies that the mandatory consideration of such an aggravating factor, may justify enhancing the terms and conditions of probation with regards to participation in specified DUI programs.

3) Requires that enrollment in an approved DUI program for first offenders take place within 30 days of conviction.

4) Allows the court to grant an extension of no longer than 30 days upon the request of the program provider.

5) Allows an extension to be requested or granted by telephone or by other electronic means.

6) Requires a court to refer a person with a second or subsequent DUI conviction to a program, as specified, as a condition of probation.

7) Requires the clerk of the court to also indicate the duration of the treatment program ordered on court referral and tracking documents.

EXISTING LAW:

1) Requires the court to order a first DUI offender whose blood-alcohol concentration was 0.20 percent or more, by weight, or who refused to take a chemical test, to participate for at least nine months or longer, as ordered by the court, in a licensed program that consists of at least 60 hours of program activities. (Veh. Code § 23538, subd. (b)(2).)

2) Requires the court to order a first DUI offender whose blood-alcohol concentration was less than 0.20 percent, by weight, to participate for at least three months or longer, as ordered by the court, in a licensed program that consists of at least 30 hours of program activities. (Veh. Code § 23538, subd. (b)(1).)

3) Specifies that if a person is convicted of a violation of Section DUI or DUI with injury, the court shall consider a concentration of alcohol in the person's blood of 0.15 percent or more, by weight, or the refusal of the person to take a chemical test, as a special factor that may justify enhancing the penalties in sentencing, in determining whether to grant probation, and, if probation is granted, in determining additional or enhanced terms and conditions of probation. (Veh. Code § 23578.)

4) States that the court shall also impose as a condition of probation, upon conviction of a first DUI, that the driver shall complete a DUI program, licensed as specified, in the driver's county of residence or employment, as designated by the court. (Veh. Code § 23538, subd. (b).)

5) In lieu of the DUI education program, a court may impose, as a condition of probation, that the person complete, subsequent to the underlying conviction, a residential live in program dealing with substance abuse, if the person consents and has been accepted into that program. (Veh. Code, § 23598.)

6) States that the court shall advise the person at the time of sentencing that the driving privilege shall not be restored until proof satisfactory to the department of successful completion of a DUI program of the length required under this code that is licensed, as specified, has been received in the department's headquarters. (Veh. Code § 23538, subd. (b)(3).)

7) Requires the court to refer a first time DUI offender whose concentration of alcohol in his or her blood was less than 0.20 percent, by weight, to participate for at least three months or longer, as a condition of probation, in a licensed program that consists of at least 30 hours of program activities. (Health & Saf. Code § 11837, subd. (c)(1).)

8) Requires the court to order a first time DUI offender whose concentration of alcohol in the person's blood was 0.20 percent or more, or the person refused to take a chemical test, to participate, for at least nine months or longer, as ordered by the court, in a licensed program that consists of at least 60 hours of program activities, as a condition of probation. (Health & Saf. Code § 11837, subd. (c)(2).)

9) Allows the State Department of Health Care Services to specify in regulations the activities required to be provided in the treatment of participants receiving nine months of licensed program services. (Health & Saf. Code § 11837, subd. (d).)

10) Specifies that "probation" means "the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer." (Pen. Code, § 1203(a).)

11) Specifies that "conditional sentence" means "the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to conditions established by the court without the supervision of a probation officer." (Pen. Code, § 1203(a).)

12) Provides that the court, in granting probation, may suspend the imposing or the execution of the sentence and may direct that the suspension may continue for a period of time not exceeding the maximum possible term of the sentence, except as specified, and upon those

terms and conditions as it shall determine. (Pen. Code, § 1203.1.)

13) States that the court may impose and require any or all of the terms of imprisonment, fine, and conditions, and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done and for the rehabilitation of the probationer, and that should the probationer violate any of the terms or conditions imposed by the court in the matter, it shall have authority to modify and change any and all the terms and conditions and to reimprison the probationer in the county jail, as specified. (Pen. Code, § 1203.1, subd. (j).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Drugged-driving has seen a dramatic increase in the past several years. According to the DMV's annual report of the DUI Management Information System (MIS), the number of drug-involved crash fatalities increased by 15.4% in 2012. Drug-involved fatalities represent 28.7% of the total number of deaths associated with car crashes. We should treat the issue of drunk-and drugged-driving as a health issue rather than a criminal one. DUI Treatment Programs include educational group counseling sessions as well as individual interviews that showcase the severity of mixing alcohol with drugs while driving.

   "Effective January 1st, 2014, California statute made it explicitly clear that it is unlawful for a person to drive under the combined influence of drugs and alcohol. This bill requires all first DUI offenders convicted with a blood-alcohol concentration of .15 and above and a controlled substance in their system to attend a 9 month program (Current law requires 6 month). Furthermore, this bill allows the courts to consider any blood-alcohol concentration in combination with a controlled substance as special factor that may justify enhancing the terms of a DUI treatment program.

   "DUI Treatment Programs have been proven to significantly reduce DUI recidivism for first and repeat offenders through sessions that focus on alcohol and drug abuse. These programs are affordable and in cases of financial hardship some or all fees associated with the program can be waived. This bill narrowly targets first-offenders and will serve as a deterrent for anyone who might get behind the wheel while intoxicated under a mixture of alcohol and drugs."

2) **Criminalizing the Otherwise Legal Use of Lawful Prescription Medication:** This bill requires courts to consider it an aggravating factor in sentencing when a person convicted of a first DUI was driving with a specified amount of alcohol in their blood, and any amount of drugs as defined in Schedule I and II of the Federal Code. (21 U.S.C. § 812.) That means individuals who have lawfully taken prescription drugs, can find that behavior criminalized as an aggravated sentencing factor and face increased penalties, even if the prescription medication did not contribute to the impairment of their driving.

   Marijuana is a drug which is included in the Schedule I list controlled substances of the Federal Code. However, in California marijuana is a drug which, if prescribed, is allowed for medical used.

There are a large number of Schedule II drugs which are common prescription medications.

Examples of Schedule II narcotics include: hydromorphone (Dilaudid), methadone (Dolophine, meperidine (Demerol), oxycodone (OxyContin, Percocet), and fentanyl (Sublimaze, Duragesic). Other Schedule II narcotics include: morphine, opium, codeine, and hydrocodone. (http://www.deadiversion.usdoj.gov/schedules/)

Examples of Schedule II stimulants include: amphetamine (Dexedrine, Adderall), and methylphenidate (Ritalin). (Id.)

Lawful consumption of the drugs listed require the court to evaluate such consumption as an aggravating factor in sentencing under this bill if any amount of the drug was found in the individual's blood in conjunction with specified alcohol levels. As a result, this bill mandates the consideration of an aggravating factor even if the drug(s) contained in the individual's blood does not increase the impairment level of the individual to drive. The increased penalties would result even if the effect of the drug had worn off, but the drug was still contained in the individual's blood.

3) **The Effect of Drugs On an Individual's Ability to Drive is Not Well Understood:** Research has established that there is a close relationship between BAC level and impairment. Some effects are detectable at very low BACs (e.g., .02 grams per deciliter, or g/dL) and as BAC rises, the types and severity of impairment increase. (Drug Impaired Driving Understanding the Problem & Ways to Reduce It (2009), National Highway Transportation Safety Administration, pp. 2-3.)

The behavioral effects of other drugs are not as well understood compared to the behavioral effects of alcohol. Certain generalizations can be made: high doses generally have a larger effect than small doses; well-learned tasks are less affected than novel tasks; and certain variables, such as prior exposure to a drug, can either reduce or accentuate expected effects, depending on circumstances. However, the ability to predict an individual's performance at a specific dosage of drugs other than alcohol is limited. Most psychoactive drugs are chemically complex molecules whose absorption, action, and elimination from the body are difficult to predict. Further, there are considerable differences between individuals with regard to the rates with which these processes occur. (Drug Impaired Driving Understanding the Problem & Ways to Reduce It (2009), National Highway Transportation Safety Administration, pp. 2-3.)

The presence of a drug in a person's blood sample might indicate a drug that was affecting the individual at the time the sample was taken, or it might indicate a drug that was consumed at some point in the past and was no longer affecting the individual at the time the sample was taken. The length of time that a drug or its metabolite is present in a given biological sample is often called its detection time. This may vary depending on the dose (amount), route of administration (injected, inhaled etc.) and elimination rate (how long it takes the body to get rid of the substance). The presence of a drug metabolite in a biological fluid may or may not reflect consumption of the drug recently enough to impair driving performance. (Drug Toxicology for Prosecutors, American Prosecutors Research Institute (2004), p. 8.)

There are additional factors that complicate the determination of the effects on drugs on

driving impairment. There are individual differences in absorption, distribution, and metabolism. Some individuals will show evidence of impairment at drug concentrations that are not associated with impairment in others. Wide ranges of drug concentrations in different individuals have been associated with equivalent levels of impairment. In certain instances drugs can be detected in the blood because of accumulation. Blood levels of some drugs or their metabolites may accumulate with repeated administrations if the time-course of elimination is insufficient. (Drug Impaired Driving Understanding the Problem & Ways to Reduce It (2009), National Highway Transportation Safety Administration, p. 3.) Because of these factors, specific drug concentration levels cannot be reliably equated with effects on driver performance.

4) **Requiring Consideration of an Aggravating Factor in Situations Where There is Not Necessarily a Corresponding Increase in the Seriousness of the Criminal Behavior:** Generally, under California criminal law, an individual only faces increased penalties for conduct that made the nature of the crime more serious. When evaluating the seriousness of a DUI, the most common measure is the impairment level of the driver. The higher the impairment of the driver, the bigger danger the driver represents to the public. As discussed above, the presence of a controlled substance in an individual's blood does not necessarily reflect a corresponding impairment in the individual's ability to drive. This bill requires the court to consider specified drug consumption as an aggravating factor in sentencing even if there was no corresponding impairment in the individual's ability to drive.

5) **Existing Judicial Discretion:** Courts have the power under existing law to increase punishments in situations when the combined use of alcohol and drugs warrant such an increase. Courts have broad general discretion to fashion and impose additional probation conditions that are particularized to the defendant. (*People v. Smith* (2007) 152, Cal.App.4th 1245, 1249.) Courts may impose any "reasonable conditions" necessary to secure justice, make amends to society and individuals injured by the defendant's unlawful conduct, and assist the "reformation and rehabilitation of the probationer." (Pen. Code, § 1203.1.) A condition of probation is valid if it is reasonably related to the offense and aimed at deterring such misconduct in the future. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.)

   If the facts demonstrate that the type or level of drugs in the individual's system increased the dangerousness of conduct resulting in a DUI, the court can require that defendant to attend a longer DUI program. Under existing law, the court could also impose additional probation conditions such as substance abuse treatment or testing for drugs, as long as the conditions were reasonably related to the offense.

6) **Requiring an Individual to Enroll in DUI Education Program Specified Time from Conviction May Create Additional Work for Courts:** This bill requires that enrollment in a DUI education program for a first time DUI offender, take place within 30 days of the conviction (possibly extended to 60 days). That requirement may create additional workload for the courts.

   Under existing law, DMV suspends an individual's driver's license for six months upon conviction of a first DUI (Veh. Code, § 13352.). In order to get full license privileges back, the individual must complete the DUI education program. If the individual wants to get a restricted license, allowing them to drive to work during the suspension period, the person must be enrolled in the DUI education program. Existing law provides incentives and

penalties to enter and complete the program in order to drive. In addition, the DUI education program is a condition of probation. So failure to enroll and complete the program exposes the individual to additional sanctions by the court. Arguably, those are sufficient incentives for an individual to enroll and complete the DUI program.

Under this bill, if an individual fails to enroll within 30 days he will have violated the law. If the individual then attempts to enroll in the program beyond 30 days, it is likely they will not be allowed to enroll by a DUI education program provider. That individual will then have to schedule a court date and make an appearance in front of the judge to be re-referred to the DUI program. This may create additional volume for the courts.

This bill contains a provision that would allow the court to extend the 30 day deadline to 60 days and allows requests to be made by a treatment provider through electronic or telephonic means. The procedure to extend the deadline is not consistent with the standard judicial process.

Generally, when a court makes decisions and issues orders, the case on which the action is being taken is on calendar, the parties, or their legal representatives are present, and the hearing is open to the public. This framework is in place to ensure that parties have notice and an opportunity to be heard. It also ensures that one party is not communicating with the judge about the case outside presence of the other party. The framework ensures that the judicial process is conducted in an open and public forum.

This bill would be a significant departure from the normal judicial process by having a 3rd party (program provider) communicate informally to obtain an extension. Is it anticipated that the program provider will be calling up the judge responsible for the case to ask permission to extend? Are the parties required to be notified? If the timeframe is extended, who is responsible for notifying the defendant? It is not clear that this bill provides a workable procedure to extend the deadline to enroll in the DUI program.

7) **Argument in Support**: According to *The California Police Chiefs Association*, "The California Police Chiefs Association is pleased to support AB 1571, which updates the California DUI treatment program structure to reflect the prevalence of concurrent drug and alcohol use by California drivers. In addition to other changes, AB 1571 allows a judge to require all first DUI offenders with a BAC of .08 to .15 *and a controlled substance* in their system to attend a 6-month program and allows a judge to require all first DUI offenders with a BAC above .15 *and a controlled substance* in their system to attend a 9-month program.

"The National Highway Traffic Safety Administration's (NHTSA's) 2013-2014 National Roadside Survey found that more than 22 percent of drivers tested positive for illegal, prescription, or over-the-counter drugs. In fact, the National Roadside Survey of Alcohol and Drug Use by Drivers, a nationally representative survey by NHTSA, found that in 2007, approximately one in eight nighttime weekend drivers tested positive for illicit drugs. Equally disturbing are the 2011 results from the National Survey on Drug Use and Health indicating that 9.9 million Americans 12 or older reported driving under the influence of illicit drugs in the past year. Using a health-based treatment approach, AB 1571 will reduce this upward trend.

"DUI Treatment programs have been proven to significantly reduce DUI recidivism for first and repeat offenders. AB 1571 will significantly reduce the number of repeat concurrent use

offenders in California. Thank you for your leadership on this matter."

8) **Argument in Opposition**: According to *Drug Policy Alliance*, "First, while we do not advocate for anyone to drive while under the influence of alcohol or drugs, no one should receive sentencing enhancements or additional terms of probation based on arbitrary data. Not enough is known about the effects of drugs, or the combination of drugs and alcohol, on driver safety. Because of the paucity of information on this topic, the National Highway Transportation Safety Administration (NHTSA) noted in 2015 report that "specific drug concentration levels cannot be reliably equated with a specific degree of driver impairment." The report explained that, unlike alcohol – where there is a strong correlation between blood alcohol levels and the degree of driver impairment – there is a poor correlation between the presence of drugs in the blood and the impairing effects of the drugs. This can be explained, in part, by variations in the level of drug use over time, the metabolism of the user, and the user's sensitivity or tolerance to a drug. Moreover, the presence of a drug may persist in the blood long after the impairment effects have worn off. Thus, requiring courts to consider the presence of any alcohol in combination with a drug in the blood as a special factor will unnecessarily result in harsher punishments for more people who are no less safe to drive.

"Second, drug testing, like many other forensic disciplines, is highly technical and imperfect. There are a host of problems with drug testing techniques and analyses, including: the substantial risk of false positive test results; false negative test results; specimen contamination; and chain of custody, storage, and re-testing issues. As the toxicological literature makes clear, "a number of routinely prescribed medications have been associated with triggering false-positive results." In the context of marijuana, for example, research demonstrates that drug tests may return false positives for THC. Studies have found that false positive THC tests results have been associated with the passive ingestion (i.e. second-hand) of marijuana smoke. Similarly, other studies have demonstrated that heavy marijuana users who abstain from marijuana use for at least a week have returned positive THC tests. In addition, the use of some pharmaceutical drugs, like Marinol and Sativex, typically returns positive THC test results. It, therefore, does not make sense to increase a person's sentence or terms and conditions of parole based on test results that are unreliable and often incorrect.

"Finally, the March 28, 2016 amendments to AB 1571 inappropriately tie California penalties to federal laws, made by the U.S. Congress, despite inconsistencies between California and federal laws. The bill now cross-references federal code sections that define marijuana and other drugs as Schedule I and Schedule II substances. Yet, because our state legislature has not always concurred with the conclusions of the U.S. Congress, the California code definitions for Schedule I and Schedule II substances do not mirror the definitions in the federal code. Furthermore, through direct democracy ballot measures, or future legislation, the differences may become even more pronounced."

9) **Prior Legislation**:

a) SB 780 (Emmerson), of the 2011-2012 Legislative Session, would have increased minimum county jail to 180 days upon conviction of a third DUI. SB 780 was held in the Senate Public Safety Committee.

b) AB 1487 (Berryhill), of the 2007-2008 Legislative Session, would have decreased the blood alcohol content (BAC) of a person convicted of DUI for referral to a lengthier

driving under the influence program, as specified. AB 1487 died in the Senate Public Safety Committee,

c) AB 1352 (Liu), Chapter 164, Statutes of 2005, requires a first time DUI offender with blood alcohol content .20 or more to attend a 9 month DUI educational program.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of DUI Treatment Programs (Sponsor)
A Better Citizen Foundation
Alcohol Drug Council
Alcohol Justice
California Association of Code Enforcement Officers
California Association of Highway Patrolmen
California College and University Police Chiefs Association
California Police Chiefs Association
California Peace Officers Association
California Narcotic Officers' Association
Fresno County Hispanic Commission on Alcohol & Drug Abuse Services
Foundation for Advancing Alcohol Responsibility
Health Net
Lifesafer of Northern California
Janus of Santa Cruz
Los Angeles County Professional Peace Officers Association
Los Angeles Deputy Sheriffs
Los Angeles Police Protective League
Riverside Sheriffs Association
We Save Lives
Zona Seca

16 private individuals

Opposition

American Civil Liberties Union of California
California Attorneys for Criminal Justice
California Public Defenders Association
Drug Policy Alliance

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

Date of Hearing: April 5, 2016
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1675 (Mark Stone) – As Amended March 28, 2016

SUMMARY: Requires a program of informal supervision for minors who commit the crimes of solicitation, prostitution, or loitering with the intent to commit prostitution. Specifically, **this bill**:

1) Requires a probation officer, in a case in which a minor is alleged to have committed the crime of solicitation, prostitution, or loitering with the intent to commit prostitution, to provide informal supervision for the minor, instead of requesting that the prosecutor file a petition declaring the minor to be a ward of the juvenile court.

2) Requires the probation officer to delineate a specific program of supervision for the minor.

EXISTING LAW:

1) Provides that anyone who solicits or who agrees to engage in or who engages in any act of prostitution is guilty of a misdemeanor. (Pen. Code, § 647, subd. (a)(2).)

2) Makes it a crime to loiter in a public place for the purpose of engaging in prostitution. (Pen. Code, § 653.22.)

3) Punishes the crime of loitering with the intent to engage in prostitution as a misdemeanor. (Pen. Code, § 653.26.)

4) States that, in a case where the probation officer concludes that a minor is within the jurisdiction of the juvenile court or will probably soon be within that jurisdiction, he or she may delineate a specific program of informal supervision for the minor instead of filing a delinquency or dependency petition, if the minor and the minor's parent or guardian consent. (Welf. & Inst. Code, § 654.)

5) Restricts a program of informal supervision to no more than six months. (Welf. & Inst. Code, § 654.)

6) Provides that a program of informal supervision may call for the minor to obtain care and treatment for the misuse of or addiction to controlled substances from a county mental health service or other appropriate community agency. (Welf. & Inst. Code, § 654.)

7) Provides that a program of informal supervision must require the minor's parents or guardians of the minor to participate with the minor in counseling or education programs. (Welf. & Inst. Code, § 654.)

8) Authorizes the probation officer to file a petition, or request that the prosecuting attorney file a petition, at any time within the six-month period or up to 90 days thereafter. (Welf. & Inst. Code, § 654.)

9) Excludes minors alleged to have committed certain offenses for participating in a program of informal supervision, except in the unusual case where the interest of justice would best be served and the court gives reasons on the record for its decision. (Welf. & Inst. Code, § 654.3.)

10) Authorizes a program of informal supervision specifically for minors charged with driving under influence of alcohol or drugs. (Welf. & Inst. Code, § 654.1.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "While California law states that children cannot consent to sex, children continue to be convicted as prostitutes. The majority of these children are trafficked and forced, induced or coerced into commercial sex. Others are runaways who find themselves on the streets with no other means to survive. All are victims.

   "Fortunately, children who are involved in prostitution are beginning to be treated and provided services as victims. Task forces, programs and services have been put into place, and even scarce public dollars have been allocated to help these children. However, the fact remains that these children will always be viewed -- and more importantly, treated -- as criminals as long as they are wards of delinquency and can be prosecuted as prostitutes."

2) **Informal Supervision Rather Than Wardship**: Juvenile delinquency actions are begun by the filing of a petition under Welfare and Institutions Code section 602. The petition alleges criminal offenses and is brought by the district attorney.

   But, the Welfare and Institutions Code provides an opportunity for pre-petition informal supervision, also known as diversion. (Welf. & Inst. Code, §§ 654, 654.2.) If the probation officer concludes that the minor is within the juvenile court's jurisdiction, or likely soon will be, the officer can delineate a specific program of supervision for the minor for up to six months to try to adjust the situation that brings the minor within the juvenile court's jurisdiction. (Welf. & Inst. Code, § 654; *In re Adam R.* (1997) 57 Cal.App.4th 348.) The discretion to initially determine whether to institute informal supervision against the minor rests with the probation officer and cannot be delegated to the prosecution. (*Charles S. v. Superior Court* (1982) 32 Cal.3d 741, 746.)

   Informal supervision is a voluntary contract between the probation officer, the minor, and the parents or guardians. The juvenile may be placed on informal probation for up to six months. If the juvenile successfully completes this program, the case is then closed. If the juvenile is unsuccessful at any time during the six-month period, the probation department may make a referral to the district attorney's office for a formal petition to the juvenile court. (Welf. & Inst. Code, § 654.)

   Importantly, the court cannot require a minor to admit the truth of the petition before granting

informal supervision.[1] (*In re Ricky J.* (2005) 128 Cal.App.4th 783.)

This bill creates a process of informal supervision for minors alleged to be involved in prostitution to be diverted from the delinquency court process, so that these children can still receive support services with the help of the probation department, without the immediate threat of criminal sanctions. It requires probation officers to initially provide informal supervision in these types of cases, rather than having the prosecutor file a delinquency petition asking the court to declare the minor a ward of the court.

3) **Safe Harbor Laws**: Legislation containing protective provisions for trafficked children is sometimes called "safe harbor" laws. Common goals identified in safe harbor legislation include: that trafficked children be treated as victims and not prosecuted as prostitutes, that trafficked children be diverted from the justice system and placed in appropriate services.

   Safe harbor laws can take different approaches including providing immunity from prosecution for certain offenses by minors, creating an affirmative defense to criminal charges for trafficked victims, providing for the pretrial diversion of trafficked youth, and creating procedures to clear trafficking related criminal convictions from victim's records.

   This bill diverts minors from the juvenile delinquency system while providing needed services under the supervision of the probation department.

4) **Argument in Support**: According to the *California Attorneys for Criminal Justice*, "This bill would move from the over-criminalization of minors that participate in acts of prostitution and move towards providing diversion programs, preventing the minor from being declared a ward of the juvenile court.

   "In the past few years, legislators and law enforcement have frequently attempted to pass harsh, draconian laws that increase punishment for persons that are involved in acts of prostitution. However, as we have seen in the past few decades, the over-criminalization, particularly that of youth, has failed as an effective policy. In addition, criminalizing these minors continues the pattern of blaming the victim without looking at the heart of the issue.

   "AB 1675 would highlight these minors as victims and provide the much needed diversion and support his vulnerable population requires. By reevaluating our treatment our treatment of these minors, we can avoid treating them as criminals and instead providing much-need support to overcome these obstacles. These minors are victimized without being provided needed rehabilitation, mental health treatment, and educational alternatives. This bill takes the right approach in intervening before the minor is forced into a cycle of crime."

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[1] In this respect, informal supervision differs from deferred entry of judgment (DEJ) which provides an informal juvenile court alternative for first-time non-violent offenders. With DEJ, the minor admits the allegations of the petition, but a jurisdictional and dispositional hearing is not held. Instead, entry of judgment is deferred and the minor is required to comply with certain conditions for a period of 12 to 36 months. If the minor complies, the charges in the section petition are dismissed, the arrest is deemed never to have occurred, and the minor's juvenile record is sealed. (See Welf. & Inst. Code, §§ 790-794.)

5) **Related Legislation**:

a) AB 1760 (Santiago) immunizes from prosecution a minor who has engaged in a commercial sex act or who committed a nonviolent crime as a human trafficking victim and instead allows the minor to be adjudged to be a dependent subject to the jurisdiction of the juvenile court. AB 1760 will be heard by this Committee today.

b) AB 1708 (Gonzalez) decriminalizes prostitution by minors. AB 1708 is pending hearing in this Committee.

c) SB 1322 (Mitchell) decriminalizes specified prostitution-related offenses committed by a person under 18, but would authorize a peace officer to take a minor into temporary custody. SB 1322 is pending hearing in the Senate Public Safety Committee.

6) **Prior Legislation**:

a) SB 114 (Pavley), Chapter 42, extended the sunset date to January 1, 2017, for the discretionary pilot project related to commercially sexually exploited minors established pursuant to SB 1279 (Pavley) and extended the date for the District Attorney of Los Angeles to submit a report to the Legislature to April 1, 2016.

b) AB 799 (Swanson), Chapter 51, Statutes of 2011, extended the sunset of the existing Alameda County pilot project relating to sexually exploited minors to January 2017, and requires the Alameda County District Attorney to provide a report to the Legislature on the pilot contingent upon local funding and operation of the pilot by April 2016.

c) SB 1807 (Morgan), Chapter 1258, Statutes of 1988, created a program of supervision specifically for minors charged with driving under the influence of an alcoholic beverage or drug.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union
California Attorneys for Criminal Justice
California District Attorneys Association
California Public Defenders Association

Opposition

None

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744

Date of Hearing: April 5, 2016
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1760 (Santiago) – As Introduced February 2, 2016

SUMMARY: Requires police officers to make a determination if a minor arrestee is victim of human trafficking or has engaged in a commercial sex act. Provides the minor with immunity from arrest and prosecution for non-violent offenses committed as a direct result of being trafficked. Provides immunity from arrest and prosecution for minors that exchange sex acts for payment. Specifically, **this bill**:

1) Requires a peace officer to determine whether a suspect of a crime is a minor who has engaged in a commercial sex act or is a minor who is a human trafficking victim, and whether any nonviolent crime that person is suspected of was committed as a direct result of being trafficked.

2) Prohibits the arrest of a minor for the suspected crime, if the minor meets the criteria stated above.

3) Requires any record of an arrest previously made to be sealed and destroyed if an officer makes the specified factual determination.

4) Requires the peace officer to report suspected abuse or neglect of the minor to the county child welfare agency if the officer has made the specified determination.

5) Prohibits the arrest or punishment of a minor who has exchanged or attempted to exchange sex acts in return for money or other consideration, commencing June 30, 2017.

6) Prohibits the arrest or punishment of a minor who has loitered in a public place with the intent to exchange sex acts in return for money or other consideration, commencing June 30, 2017.

7) The bill would instead allow the person to be adjudicated a dependent of the juvenile court and would require a peace officer to report suspected abuse or neglect to the county child welfare agency.

8) Requires the Commission on Peace Officer Standards and Training (POST) to update its training to conform with changes in law that this bill would make prohibiting the arrest and punishment of minor victims of human trafficking.

9) Enacts the State Plan to Serve and Protect Child Trafficking Victims and would require the California Health and Human Services Agency, no later than January 30, 2017, to convene an interagency workgroup, as specified, to develop the plan with the following minimum

requirements:

a) A multiagency-coordinated child trafficking response protocol and guidelines for local implementation that establish clear lines of ongoing responsibility to ensure that child trafficking victims have access to the necessary continuum of treatment options.

b) Requires the workgroup to submit the plan to the Legislature, Judicial Council, and Governor no later than January 30, 2018.

10) Requires the State Department of Social Services to establish a working group in consultation with county welfare departments and other stakeholders to develop recommendations for the board, care, and supervision of child trafficking victims who are in need of placement in facilities that will protect them from traffickers and provide needed specialized support and services.

11) States that the State Department of Social Services, with input from specified stakeholders, to identify, develop, and disseminate screening tools for use by county child welfare and probation staff to identify children who are child trafficking victims.

12) Requires the State Department of Social Services no later than December 31, 2017, to provide counties with guidance on the use of the screening tools.

13) Specifies that the State Department of Social Services and the State Department of Health Care Services, in consultation with specified stakeholders, shall identify tools and best practices to screen, assess, and serve child trafficking victims.

14) Requires the State Department of Social Services to develop curriculum and provide training to local multidisciplinary teams no later than December 31, 2017.

15) Requires each county to develop an interagency protocol to be utilized in serving child trafficking victims. The bill would require each county's protocol to be adopted by the board of supervisors no later than June 30, 2017. The bill would require the protocols to identify the roles and responsibilities of county based agencies and local service responders in serving victims of trafficking or commercial sexual exploitation.

16) States that the administrator certification program for group homes, the administrator certification program for short-term residential treatment centers, mandatory training for licensed or certified foster parents, and training for mandated child abuse reporters and child welfare personnel shall include instruction on cultural competency and sensitivity and related best practices for providing adequate care to child trafficking victims.

17) Requires the California Child Welfare Council to provide recommendations and updates to the State Plan to Serve and Protect Child Trafficking Victims.

EXISTING LAW:

1) Requires law enforcement agencies to use due diligence to identify all victims of human trafficking, regardless of the citizenship of the person. (Pen. Code, § 236.2.):

2) Specifies that when a peace officer comes into contact with a person who has been deprived of his or her personal liberty, a minor who has engaged in a commercial sex act, a person suspected of violating specified prostitution offenses, or a victim of a crime of domestic violence or sexual assault, the peace officer shall consider whether the following indicators of human trafficking are present (Pen. Code, § 236.2.):

   a) Signs of trauma, fatigue, injury, or other evidence of poor care.

   b) The person is withdrawn, afraid to talk, or his or her communication is censored by another person.

   c) The person does not have freedom of movement.

   d) The person lives and works in one place.

   e) The person owes a debt to his or her employer.

   f) Security measures are used to control who has contact with the person.

   g) The person does not have control over his or her own government-issued identification or over his or her worker immigration documents.

3) States that any person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services, is guilty of human trafficking and shall be punished by imprisonment in the state prison for 5, 8, or 12 years and a fine of not more than five hundred thousand dollars ($500,000). (Pen. Code § 236.1, subd. (a).)

4) Specifies that any person who deprives or violates the personal liberty of another with the intent to effect or maintain a violation of specified sex offenses, is guilty of human trafficking and shall be punished by imprisonment in the state prison for 8, 14, or 20 years and a fine of not more than five hundred thousand dollars ($500,000). (Pen. Code § 236.1, subd. (b).)

5) Provides that any person who causes or persuades, or attempts to cause or persuade, a person who is a minor to engage in a commercial sex act, with the intent to effect a violation of specified sex offenses is guilty of human trafficking. A violation of this subdivision is punishable by imprisonment in the state prison as follows:

   a) Five, 8, or 12 years and a fine of not more than five hundred thousand dollars ($500,000). (Pen. Code § 236.1, subd. (c)(1).)

   a) Fifteen years to life and a fine of not more than five hundred thousand dollars ($500,000) when the offense involves force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person. (Pen. Code § 236.1, subd. (c)(2).)

6) Defines "coercion" as "any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; the abuse or threatened abuse of the legal process; debt bondage; or providing and

facilitating the possession of any controlled substance to a person with the intent to impair the person's judgment." (Pen. Code § 236.1, subd. (h)(1).)

7) Defines "commercial sex act" as "sexual conduct on account of which anything of value is given or received by any person." (Pen. Code § 236.1, subd. (h)(2).)

8) Defines "deprivation or violation of the personal liberty of another" as "substantial and sustained restriction of another's liberty accomplished through force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person, under circumstances where the person receiving or apprehending the threat reasonably believes that it is likely that the person making the threat would carry it out." (Pen. Code § 236.1, subd. (h)(3).)

9) Defines "duress" as a "direct or implied threat of force, violence, danger, hardship, or retribution sufficient to cause a reasonable person to acquiesce in or perform an act which he or she would otherwise not have submitted to or performed; a direct or implied threat to destroy, conceal, remove, confiscate, or possess any actual or purported passport or immigration document of the victim; or knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or immigration document of the victim." (Pen. Code § 236.1, subd. (h)(5).)

10) Defines "Forced labor or services" as labor or services that are performed or provided by a person and are obtained or maintained through force, fraud, duress, or coercion, or equivalent conduct that would reasonably overbear the will of the person. (Pen. Code § 236.1, subd. (h)(5).)

11) Specifies that the total circumstances, including the age of the victim, the relationship between the victim and the trafficker or agents of the trafficker, and any handicap or disability of the victim, shall be factors to consider in determining the presence of "deprivation or violation of the personal liberty of another," "duress," and "coercion" as described in this section. (Pen. Code § 236.1, subd. (i).)

12) Specifies that persons who committed the act or made the omission under threats or menaces sufficient to show that they had reasonable cause to and did believe their lives would be endangered if they refused, are not guilty of a crime (unless the crime be punishable with death). (Pen. Code, § 26.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Child victims of human trafficking are forced, induced, or coerced into providing labor services, or sex. A trafficked child may be compelled to engage in illegal activities such as prostitution or selling drugs. Instead of being identified as trafficked and treated as victims, many are treated as criminals and prosecuted for the very crimes that were part of the traffickers' victimization and profit.

"Currently in California, a minor can be prosecuted for prostitution and for non-violent crimes their traffickers forced them to commit. Arrest and prosecution further traumatizes the

victim and leaves him or her with a profound distrust of law enforcement. This can deter victims from seeking assistance or leave them vulnerable to continued exploitation. Furthermore, the criminal record that results from being arrested and prosecuted as a child can create long-term barriers to education, employment, housing, and other opportunities.

"AB 1760 is necessary in order to protect trafficked child victims from being criminalized and to ensure there is a system in place that effectively identifies, houses, and cares for all trafficked children. This measure will reduce a trafficked child victims' distrust of law enforcement, establish multi-leveled coordinated efforts, ensure diversion to supportive services, and prevent the negative psychological impacts child trafficked victims have due to arrest and detention."

2) **Decriminalization of Minors Engaged in Prostitution:** This bill would prohibit the arrest or punishment of a minor who has exchanged or attempted to exchange sex acts in return for money or other forms of payment. Under current law, minors committing prostitution can be arrested by law enforcement. Those minors are then dealt with through the juvenile justice system. By decriminalizing prostitution of minors, those minors could no longer be arrested and would not go through the juvenile justice system. This bill would instead allow a temporary detention of the minor and a referral to the child welfare system (child protective services).

   There are tensions between addressing the problem of minors engaged in prostitution through the juvenile justice system versus child protective services. The ability to arrest a minor and go through the juvenile justice system arguably provides a higher likelihood that the minor will receive services. There is concern without a court process that has the ability to impose sanctions, the minor will simply return to the situation in which they had been engaging in prostitution. The child welfare system does not have the ability to provide a way to mandate services for a minor, or prevent the minor from returning to the life that involved prostitution.

   However, there are concerns about arresting minors engaged in prostitution and processing them through the juvenile justice system. To the extent that a minor engaged in prostitution is a victim of crime, arresting them and charging them with a crime are acts which treat them as a criminal. There is a concern that if a minor is subject to arrest they will be less likely to cooperate with law enforcement to seek help regarding their trafficker. There is also a concern that a minor would be less likely to seek services because of the minor is worried about coming in contact with authorities that might treat them as criminals.

   Many district attorney offices throughout the state are choosing to handle minors involved in prostitution through the juvenile justice system, but diverting them very early in the process to programs that can provide the juvenile appropriate services. Such diversion programs allow the minor to avoid any juvenile conviction.

3) **Peace Officers are Already Mandated Reporters of Child Abuse or Neglect:** The California Child Abuse Neglect Reporting Act (CANRA) requires mandatory reporting when certain individuals suspect that a child has been abused or neglected. Law enforcement officers are one of the groups which have mandatory reporting responsibilities.

   A mandated reporter must make a report whenever, in his/her professional capacity or within the scope of his/her employment, he/she has knowledge of, or observes a child (a person

under 18) whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Abuse includes the sexual exploitation of a child.

When law enforcement suspects abuse or neglect they inform child protective services and the district attorney's office of the suspected abuse.

4) **This Bill Requires Police Officers to Take On Responsibilities Normally Reserved For the Judicial System:** This bill requires officers to not only make a determination about whether or not a juvenile suspect they encounter on the street is a victim of human trafficking, but also whether there are other crimes (in any jurisdiction) that are a direct result of being trafficked. The requirement that the officer determine if there are other crimes that are a direct result of being trafficked requires the officer to make legal determinations ordinarily made by district attorneys and courts. The determination that an individual is a victim of human trafficking can require investigative resources and information not available to an officer making a decision in the field about whether to arrest a suspect.

Officers are not in a position to make a factual and legal determinations other cases about which they have not investigated, or cases in other law enforcement jurisdictions. Generally, if an officer determines that a crime has in fact been committed, but there is a claim that the individual was forced to engage in the crime, the officer would refer the case to the district attorney's office for evaluation. That claim would be evaluated by the district attorney's office and if not resolved, be contested in court.

Often the arresting officer doesn't have the ability to make a determination about facts that need to be investigated beyond the scene of the arrest. The determination of whether someone is a victim of human trafficking is going to require investigation which cannot be done at the scene of the arrest. To require the arresting officer to make such a determination would place demands on that officer which have traditionally been placed on the judicial system.

This bill not only places a burden on the officer to make determinations which can be outside the reach of his or her ability to immediately determine, but expects the officer to make determinations on cases in which the juvenile is a suspect, but about which the officer has no personal knowledge.

5) **The Existing Legal Defenses of Duress and Necessity Can Apply to Victims of Human Trafficking Forced to Commit Crimes:** California law provides the possibility of defenses based on duress or necessity when a person commits a crime to avoid a significant danger to themselves or others. These defenses certainly can apply to situations in which victims of human trafficking are forced into criminal behavior by their trafficker. Circumstances consistent with a defense of duress or necessity can be considered by a district attorney's office when they decide what criminal charges to file, or whether charges will be filed at all. If charges are filed, evidence to establish these defenses can be presented as part of the court process.

The instruction the jury would receive when considering the defense of duress is as follows:

> The defendant acted under duress if, because of threat or menace, (he/she) believed that (his/her/ [or] someone else's) life would be in immediate danger if (he/she) refused a

demand or request to commit the crime[s]. The demand or request may have been express or implied.

The defendant's belief that (his/her/ [or] someone else's) life was in immediate danger must have been reasonable. When deciding whether the defendant's belief was reasonable, consider all the circumstances as they were known to and appeared to the defendant and consider what a reasonable person in the same position as the defendant would have believed. (Calcrim 3402.)

A defense of necessity is similar to duress.

To justify an instruction on the defense of necessity, a defendant must present evidence sufficient to establish that she violated the law (1) to prevent a significant bodily harm or evil to themselves or someone else, (2) with no reasonable legal alternative, (3) without creating a greater danger than the one avoided, (4) with a good faith belief that the criminal act was necessary to prevent the greater harm, (5) with such belief being objectively reasonable, and (6) under circumstances in which she did not substantially contribute to the emergency. (Calcrim 3403.)

6) **Argument in Support**: According to *The California Public Defenders Association*, "Commercial sexual exploitation and sex trafficking of minors should be understood as acts of abuse and violence against minors. Minors who are commercially sexually exploited or trafficked for sexual purposes should not be considered criminals. Identification of victims and survivors and any intervention, above all, should do no further harm to any child or adolescent. There is substantial and compelling evidence that commercial exploitation and sex trafficking of minors in the United States are serious problems with immediate and long-term adverse consequences for children and adolescents, as well as for families, communities, and society as a whole. Efforts to identify and respond to the commercial sexual exploitation and sex trafficking of minors in the United States are emerging, but efforts to date are largely under supported, insufficient, uncoordinated, and unevaluated. Efforts to prevent, identify, and respond to commercial sexual exploitation and sex trafficking of minors require collaborative approaches that build upon the core capabilities of people and entities from a range of sectors.

"Law enforcement officers are often the earliest to respond to minors that are the victims of commercial sexual exploitation and sex trafficking. Their knowledge and ability to identify victims, investigate cases for appropriate treatment/services, and make appropriate referrals/recommendations to the court is crucial to the development of an overall response to commercial sexual exploitation and sex trafficking of minors at the earliest opportunity. That said, many law enforcement personnel do not recognize commercial sexual exploitation and sex trafficking of minors as serious problems. As a result, they may fail to identify victims of these crimes and may be uncertain about how to handle these cases.

"Recently the Committee on The Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States (Committee), Institute of Medicine and National Research Council issued a report with The National Academies Press entitled *Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States*, found that "Although efforts to train personnel within the legal system to address human trafficking have increased, the majority of personnel in the system have not been trained to recognize and respond to

suspected or confirmed cases of commercial sexual exploitation and sex trafficking of minors." The Committee further observed that "Juvenile justice personnel need training in identifying victims of trafficking who are in the system on charges unrelated to prostitution through intake screenings, runaway and homeless programs, and programming in juvenile detention centers." Recommendations by the Committee included the establishment of diversion programs so that youth identified as victims of commercial sexual exploitation and sex trafficking receive treatment as part of their rehabilitation or in lieu of punishment; and that juvenile justice agency personnel should refer youth identified as victims of commercial sexual exploitation and sex trafficking to appropriate treatment services. The Committee further recommended that states should develop laws and policies that redirect young victims and survivors of commercial sexual exploitation and sex trafficking from arrest and prosecution as criminals or adjudication as delinquents to systems, agencies and services that are equipped to meet their needs and that such laws should apply to all children and adolescents under age 18.

"It has also been recognized that many victim and support service providers working with vulnerable youth lack an understanding of commercial sexual exploitation and sex trafficking, and therefore may not recognize youth in their care who are at risk of or are victims/survivors of these abuses. As a result, these service providers sometime fail to connect youth in need to appropriate and timely services. The Committee further acknowledged that victims and survivors of commercial sexual exploitation and sex trafficking are frequently in need of services, often including out-of-home placement, which are limited and often nonexistent. This bill would assist in insuring that law enforcement offices, other stakeholders, and providers receive the appropriate training to better assist the victims of commercial sexual exploitation and sex trafficking and where necessary the appropriate treatment and services for the care and treatment of exploited children. This bill would further provide for a consistent and appropriate legal response to victims and survivors of commercial sexual exploitation and sex trafficking."

7) **Argument in Opposition**: According to *The California State Sheriffs' Association*, "We are sympathetic to the plight of crime victims, especially minor victims of human trafficking. That said, this bill's response to horrific situation is to inappropriately blend the roles of members of the criminal justice system, potentially allow criminals to escape liability, and inadvertently encourage human traffickers to use minors in their illicit trade.

"It is not the role of a frontline law enforcement officer to make a determination that a person is actually the victim of a crime. Rather, officers gather facts and investigate crime scenes to form reasonable beliefs about what might have transpired. It is the duty of the prosecutor to allege liability and victim status, and perhaps confer immunity to certain parties. This bill jumbles that relationship and requires peace officers to effectively determine whether or not certain persons are criminally liable for their behavior. The bill further usurps the roles of judges and juries who ultimately determine culpability and punishment.

"We also fear that this bill, inasmuch as it automatically grants immunity to a minor who has committed any offense that is not a violent felony if it results from human trafficking, will allow offenders to escape punishment. Again, this decision should be made by the judicial system and not frontline law enforcement officers. Additionally, given the immunity provisions this bill creates, we believe that human traffickers would be encouraged to utilize minors in their illegal activities because minors are effectively precluded from being arrested,

charged, or penalized."

8) **Related Legislation**:

a) AB 1675 (Stone), would specify that a minor who commits those crimes is not subject to criminal charges in the juvenile court, but he or she may be adjudged a dependent child of the child welfare court. AB 1675 is pending hearing in Assembly Public Safety Committee.

b) AB 1731 (Atkins), authorizes the chief probation officer of a county to create a program to provide services to youth within the county that address the need for services relating to the commercial sexual exploitation of youth. AB 1731 is pending hearing in Assembly Appropriations.

c) AB 1761 (Weber), would create an affirmative defense against a charge of a nonviolent crime that was committed as a direct result of being a human trafficking victim. AB 1761 is pending hearing in the Assembly Public Safety Committee.

d) AB 1762 (Campos), would allow an individual convicted of a nonviolent crime while he or she was human trafficking victim to apply to the court to vacate the conviction at any time after it was entered. AB 1762 is pending hearing Assembly Appropriations Committee.

e) SB 1322 (Mitchell), would decriminalize specified prostitution related offenses committed by person under 18, but would authorize a peace officer to take a minor into temporary custody. SB 1322 is pending hearing in Senate Public Safety Committee.

9) **Prior Legislation**:

a) AB 1585 (Alejo), Chapter, 708, Statutes of 2014, provides that a defendant who has been convicted of solicitation or prostitution may petition the court to set aside the conviction if the defendant can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking.

b) AB 2040 (Swanson), Chapter 197, Statutes of 2012, provides that a person who was adjudicated a ward of the court for the commission of a violation of specified provisions prohibiting prostitution may petition a court to have his or her records sealed as these records pertain to the prostitution offenses without showing that he or she has not been subsequently convicted of a felony or misdemeanor involving moral turpitude, or that rehabilitation has been attained.

c) AB 1940 (Hill), of the 2011-12 Legislative Session, would have authorized a court to seal a record of conviction for prostitution based on a finding that the petitioner is a victim of human trafficking, that the offense is the result of the petitioner's status as a victim of that crime, and that the petitioner is therefore factually innocent. AB 1940 was held on the Assembly Committee on Appropriations' Suspense File.

d) AB 702 (Swanson), of the 2011-12 Legislative Session, would have allowed a person adjudicated a ward of the court or a person convicted of prostitution to have his or her

record sealed or conviction expunged without showing that he or she has not been subsequently convicted or that he or she has been rehabilitated. AB 702 was never heard by this Committee and was returned to the Chief Clerk.

e) AB 22 (Lieber), Chapter 240, Statutes of 2005, created the California Trafficking Victims Protection Act, which established civil and criminal penalties for human trafficking and allowed for forfeiture of assets derived from human trafficking. In addition, the Act required law enforcement agencies to provide Law Enforcement Agency Endorsement to trafficking victims, providing trafficking victims with protection from deportation and created the human trafficking task force.

REGISTERED SUPPORT / OPPOSITION:

Support

Coalition to Abolish Slavery & Trafficking (Sponsor)
ACT for Women and Girls
American Academy of Pediatrics
American Association of University Women Long Beach
California Church IMPACT
California Public Defenders Association
California Women's Law Center
CAST Survivor Advisory Caucus
California Public Defenders Association
Clergy and Laity United for Economic Justice
Coalition for Humane Immigrant Rights of Los Angeles
Department on the Status of Women, City and County of San Francisco
Housing California
Legal Services for Prisoners with Children
Los Angeles Alliance for a New Economy
Opening Doors
National Association of Social Workers, California Chapter
National Council of Jewish Women CA
Religious Action Center of Reform Judaism
Shared Hope International

Opposition

California State Sheriffs' Association
Office of the District Attorney, Alameda County
Sacramento County District Attorney

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

Date of Hearing: April 5, 2016
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1761 (Weber) – As Amended March 28, 2016

SUMMARY: Creates a human trafficking affirmative defense applicable to non-violent crimes, and immunity from prosecution for crimes constituting or arising from a commercial sex committed by minors. Specifically, **this bill**:

1) States that it is defense to a charge of a non-violent crime that the defendant or minor committed the crime as a direct result of being a victim of human trafficking.

2) Establishes the standard of proof for the human trafficking affirmative defense as the preponderance of evidence standard.

3) Provides that a minor charged with a crime which constitutes, or arises from, a commercial sex act shall be conclusively presumed to have committed the crime as a direct result of being a victim of human trafficking.

4) Requires the court to independently determine whether a minor was charged with a crime which constitutes, or arises from, a commercial sex act, and if so, to conclude that the defense applies and to dismiss the case. The court must make this determination regardless of whether the minor asserts the defense.

5) States that certifying records from federal, state, tribal, or local court or government certifying agencies for documents such as U or T visas, create a rebuttable presumption the defendant committed an offense as a direct result of being a human trafficking victim.

6) Provides that the human trafficking affirmative defense can be asserted at any time before entry of plea or before the end of a trial. The defense can also be determined at the preliminary hearing.

7) Entitles a person who successfully raises the human trafficking affirmative defense to the following relief:

   a) Sealing of all court records in the case;

   b) Release from all penalties and disabilities resulting from the charge, and all actions that led to the charge shall be deemed not to have occurred; and

   c) Permission to attest in all circumstances that he or she has never been arrested for, or charged with the subject crime, including in financial aid, housing, employment, and loan applications.

8) States that, in any juvenile delinquency proceeding, if the court finds that the alleged offense was committed as a direct result of being a victim of human trafficking then it shall dismiss the case and automatically seal the case records.

9) Defines human trafficking victim as specified.

10) Defines "nonviolent crime" as "any crime or offense other than murder, attempted murder, voluntary manslaughter, mayhem, kidnapping, rape, robbery, arson, carjacking, or any other violent felony as defined in Penal Code section 667.5, subdivision (c)."

11) Provides that in a criminal action expert testimony is admissible by either the prosecution or defense regarding the effects of human trafficking on its victims, including, but not limited to the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions, or behavior of human trafficking victims.

12) States that the requisite foundation for the introduction of this expert testimony will be established if the proponent of the evidence shows its relevance and the proper qualifications of the expert witness.

13) Prohibits expert testimony on the effects of human trafficking from being considered a new scientific technique whose reliability is unproven.

14) Provides that state summary criminal information compiled and disseminated by the Attorney General shall exclude any human trafficking charge or conviction for which relief has been granted based on the affirmative defense of human trafficking.

EXISTING LAW:

1) Guarantees a defendant a meaningful opportunity to present a defense. (U.S. Const., VI Amend., Cal. Const. art. I, §. 15.)

2) Provides that all persons are capable of committing crimes except those belonging to specified classes, including person who committed the act or made the omission charged under threats or menaces sufficient to show that they had reasonable cause to and did believe their lives would be endangered if they refused. (Pen. Code, § 26.)

3) States that all relevant evidence is admissible unless it is made inadmissible by some statutory or constitutional provision. (Cal. Const., art. I, § 28(f)(2), Evid. Code, § 351.)

4) Provides that the court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time or create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury. (Evid. Code, § 352.)

5) States that a person is qualified to testify as an expert if he or she has special knowledge, skill, experience, training, or education sufficient for the court to deem the person qualified on a subject about which he or she is asked to express an opinion. (Evid. Code, § 720.)

6) Limits expert testimony to a subject that is sufficiently beyond common experience that the opinion of that expert would assist the trier of fact to understand the evidence or determine a fact in issue. (Evid. Code, § 801, subd. (a).)

7) Authorizes expert testimony in criminal cases by either the prosecution or defense regarding intimate partner battering and its effects, including the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions, or behavior of victims of domestic violence, except when offered against a defendant to prove the occurrence of the act or acts of abuse which form the basis of a criminal charge. (Evid. Code, § 1107, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Too often our survivors of human trafficking are forced to commit crimes under threat (directly and indirectly) from their traffickers. The trauma of being a victim of human trafficking is untold. In addition to sexual, emotional, and physical abuse, human trafficking victims are arrested and convicted for crimes they were forced to take part in by their traffickers. For too long, we have compounded this trauma by arresting and charging victims of human trafficking for crimes they committed directly related to their time spent as a trafficking victim. These victims are charged with crimes, while their traffickers are shielded. This bill seeks to remedy this situation and create avenues for victims to be identified and the traffickers prosecuted."

2) **Affirmative Defense**: A victim of trafficking who is charged with a crime may be able to raise the defense of duress. Duress is said to excuse criminal conduct where the actor was under an unlawful threat of imminent death or serious bodily injury, which threat caused the actor to engage in conduct violating the literal terms of the criminal law. 'if there was a reasonable, legal alternative to violating the law, 'a chance both to refuse to do the criminal act and also to avoid the threatened harm,' the defenses will fail.' (*People v. Heath* (1989) 207 Cal.App.3d 892, 899-900, citations omitted.) "Persons (unless the crime is punishable with death) who commits the act or made the omission charged under threats or menace suffices to show that they had reasonable cause to and did believe their lives would be endangered if they refused" are not guilty of the crime. (Pen. Code, § 26.) A court has a duty to give a duress instruction on its own motion if it is supported by substantial evidence and is not inconsistent with the defense theory. (*People v. Wilson* (2005) 36 Cal.4th 309, 331.)

   The defendant acted under duress if, because of threat or menace, he or she believed that his or her or someone else's life would be in immediate danger if he or she refused a demand or request to commit the crime. The demand or request may have been expressed or implied. The defendant's belief must have been reasonable. When deciding whether the defendant's belief was reasonable, consider all the circumstances as they were known to and appeared to the defendant and consider what a reasonable person in the same position as the defendant would have believed. CALCRIM 3402.

   Duress applies if the defendant has been threatened with imminent great bodily harm. (See *People v. Otis* (1959) 174 Cal.App.2d 119, 124; *United States v. Bailey* (1980) 444 U.S. 394, 409.) Also, although this is not reflected in the instruction, duress probably applies if the

instigator threatens harm to another person. (See *Heath, supra*, at p. 898, discussing *People v. Pena* (1983) 149 Cal.App.3d Supp. 14, 21-25 [a necessity defense due to threats to a third party].)

The sponsors of this bill believe the duress defense is inadequate for trafficking victims because a victim may not be able to show his or her life was in immediate danger. So, this bill creates a separate human trafficking affirmative defense. Additionally, this bill creates a conclusive presumption that if a minor is charged with a commercial sex act or a crime arising from a commercial sex act, that the offense was committed because the minor was a victim of human trafficking.

As drafted, this affirmative defense appears to allow a person to commit a non-violent crime for personal gain and escape liability by reason of being a victim of human trafficking even if there was no coercion by the trafficker to commit the crime. Moreover, the immunity for minors may result in unintended consequences of having traffickers get minors to commit additional crimes on their behalf because of that immunity.

3) **Expert Testimony**: Evidence Code section 1107 generally makes admissible in a criminal action expert testimony regarding "intimate partner battering and its effects, including the physical, emotional, or mental effects upon the beliefs, perceptions, or behavior of victims of domestic violence . . . ." As explained by the California Supreme Court:

> Battered women's syndrome "has been defined as 'a series of common characteristics that appear in women who are abused physically and psychologically over an extended period of time by the dominant male figure in their lives.' (State v. Kelly (1984) 97 N.J. 178, 193 [478 A.2d 364, 371]; see also People v. Aris (1989) 215 Cal.App.3d 1178, 1194 [264 Cal. Rptr. 167] [' "a pattern of psychological symptoms that develop after somebody has lived in a battering relationship" ']; Note, Battered Women Who Kill Their Abusers (1993) 106 Harv.L.Rev. 1574, 1578 ['a "pattern of responses and perceptions presumed to be characteristic of women who have been subjected to continuous physical abuse by their mate[s] " '].)" (*People v. Romero* (1994) 8 Cal.4th 728, 735, fn. 1; see also *People v. Humphrey* (1996) 13 Cal.4th 1073, 1083-84.)

This bill applies the same principles to expert testimony regarding the effects of human trafficking to its victims.

A person is qualified to testify as an expert if he or she has special knowledge, skill, experience, training, or education sufficient to qualify him or her as an expert on the subject to which his or her testimony relates. Against the objection of a party, such special knowledge, skill, experience, training, or education must be shown before the witness may testify as an expert.

This bill, however, presumes the reliability of the expert testimony because it prohibits the testimony from being considered a new scientific technique whose reliability is unproven.

4) **Argument in Support**: According to the *Coalition to Abolish Slavery and Trafficking* (CAST), the sponsor of this bill, "1761 creates important protections for trafficking survivors to deal with the unique nature of the trafficking crime. In CAST's experience as a service

provider working with hundreds of trafficking survivors in California, an affirmative defense will create an additional pathway for trafficking victims to be identified as the victims they are so that the real perpetrators can be prosecuted. It also ensures that the complexities of trafficking crimes can be appropriately described to judges and juries....

"Usually a leader in creative approaches to protect trafficking victims, California is far behind other states in offering an affirmative defense for trafficking victims. So, far 34 states have passed this legislation to better protect trafficking victims. It is costly not just to the victims, but also to the state of California to convict trafficking victims for crimes their traffickers force them to commit. These funds could be better spent prosecuting traffickers.

"AB 1761 creates an affirmative defense against a charge of a non-violent crime that was committed as a direct result of being a human trafficking victim. ... As a special protection for minor sex trafficking victims, AB 1761 requires the court to dismiss any charges arising from a commercial sex trafficking act against a person who was under 18 years of age, whether or not the defendant asserts the affirmative defense. Finally, AB 1761 grants trafficking victims who prevail on the affirmative defense the right to have all records in the case sealed and ensures they do not suffer long-term consequences from their arrest.

"In recognition of the complex dynamics of trafficking crimes, AB 1761 also creates a presumption that expert testimony is admissible by either the prosecution or the defense regarding the effects of human trafficking on human trafficking victims."

5) **Arguments in Opposition**:

a) The *California District Attorneys Association* writes, "[w]e do not need a new rule of evidence to allow parties to call an expert witness to educate the trier of fact on issues relating to human trafficking. California law has long provided that 'any person who has special knowledge, skill or experience in any occupation, trade or craft may be qualified as an expert in his field.' (*People v. King* (1968) 266 Cal.App.2d 437, 445.) California courts allow experts to help explain a wide variety of human behaviors and to explain why people respond in strange ways to traumatic events such as rape trauma, child abuse accommodation syndrome, post-traumatic stress, gang culture, domestic violence, and battered women's syndrome, just to name a few."

b) The *Alameda County District Attorney* states, "As written, this bill is too broad. In Section 236.32(c) would create a 'conclusive presumption' that a person under 18 who is charged with 647(b) or 653.22 is a victim of human trafficking. But not every minor arrested for these crimes is a victim of human trafficking. Those who are victims of human trafficking are enslaved, offend (sic) tortured and forced, coerced or manipulated, resulting in a lost childhood.

"We also feel that creating a system where minors who commit crimes have immunity from prosecution for committing those crimes is bad public policy. There is an Affirmative Defense of Duress that is available for victims of crime who engage in criminal conduct under the treat (sic) of another. If adults know that a minor will not be prosecuted for crimes they commit, those adults will recruit, involve, and further exploit minors believing there will be no criminal consequence.

"We have seen this tragic outcome occur over and over again in other arenas. When the punishment of adults increased for selling drugs, across this State, drug dealers were pulling children as young as 10-11-12 years old into the drug trafficking criminal enterprise. We still see transnational criminals using children to commit crimes between Mexico and California. We see minors being used in Identity Theft and crimes committed against others, including being used as recruiters for traffickers. It is a very unfortunate and horrific dynamic and one which we work very hard at breaking the psychological bonds traffickers and exploiters have over minors, but some minors engage in criminal behavior to garner favoritism or status with the trafficker."

6) **Related Legislation**:

a) AB 1675 (Stone) provides that a minor who commits the crimes of solicitation, prostitution, or loitering with the intent to commit prostitution, is subject to the jurisdiction of the juvenile dependency court rather than delinquency court. AB 1675 will be heard in this Committee today.

b) AB 1760 (Santiago) immunizes from prosecution a minor who has engaged in a commercial sex act or who committed a nonviolent crime as a human trafficking victim and instead allows the minor to be adjudged to be a dependent subject to the jurisdiction of the juvenile court. AB 1760 will be heard in this Committee today.

c) AB 1762 (Campos) allows a person convicted of a nonviolent crime while he or she was human trafficking victim to apply to vacate the conviction at any time after it was entered. AB 1762 will be heard in this Committee today.

7) **Prior Legislation**:

a) AB 1585 (Alejo), Chapter 708, Statutes of 2014, provides that a defendant who has been convicted of solicitation or prostitution, as specified, may petition the court to set aside the conviction, and allows the court to set it aside if the defendant can show that the conviction was the result of his/her status as a victim of human trafficking.

b) AB 694 (Bloom), Chapter 126, Statutes of 2013, clarified that evidence that a victim of human trafficking has engaged in a commercial sex act cannot be used to prosecute that victim for the commercial sex act.

c) SB 327 (Yee), of the 2013-2014 Legislative Session, would have allowed a writ of habeas corpus to be prosecuted when competent and substantial expert testimony relating to human trafficking was not presented at trial for a crime in which the defendant was a victim of human trafficking. SB 327 was held on the Assembly Appropriations Committee Suspense File.

d) AB 785 (Eaves), Chapter 812, Statutes of 1991, made expert testimony regarding battered women's syndrome admissible in court under specified conditions.

REGISTERED SUPPORT / OPPOSITION:

Support

Coalition to Abolish Slavery and Trafficking (Co-sponsor)
National Council of Jewish Women- California (Co-sponsor)
Act for Women and Girls
American Academy of Pediatrics
American Civil Liberties Union
California Council of Churches Impact
California Partnership to End Domestic Violence
California Public Defenders Association
California Women's Law Center
Clergy and Laity United for Economic Justice
Coalition to Abolish Slavery and Trafficking Survivor Advisory Council
Housing California
Legal Services for Prisoners with Children
Opening Doors
Religious Action Center of Reform Judaism

Opposition

Alameda County District Attorney
California District Attorneys Association
California State Sheriffs' Association
Sacramento County District Attorney
>

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744

Date of Hearing: April 5, 2016
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1829 (Levine) – As Amended March 17, 2016

SUMMARY: Conforms advisement provisions of the Penal Code related to boating under the influence, to existing provisions in the Penal Code and Harbors and Navigation Code. Specifically, **this bill**:

1) Requires that persons arrested for boating under the influence be advised that a criminal complaint may be filed against him or her for operating a vessel or water-related device while under the influence of an alcoholic beverage or any drug, or both.

2) Provides that persons arrested for boating under the influence be notified that they have a right to refuse chemical testing.

3) Specifies that persons arrested for boating under the influence be informed that the officer has the authority to seek a search warrant compelling him or her to submit a blood sample

4) States that persons arrested for boating under the influence be advised they do not have a right to have an attorney present before stating whether he or she will submit to the chemical testing, before deciding which chemical test or tests to take, or during the administration of the chemical test or tests chosen.

EXISTING LAW:

1) Provides that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized. (U.S. Const., 4th Amend.; Cal. Const., art. I, § 13.)

2) Defines a "search warrant" as a written order in the name of the people, signed by a magistrate and directed to a peace officer, commanding him or her to search for a person or persons, a thing or things, or personal property, and in the case of a thing or things or personal property, bring the same before the magistrate. (Pen. Code, § 1523.)

3) Specifically authorizes the issuance of a search warrant when all of the following apply:

   a) A sample of the blood of a person constitutes evidence that tends to show a violation of specified boating under the influence provisions.

   b) The person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test as required.

c) The sample will be drawn from the person in a reasonable, medically approved manner. (Pen. Code, § 1524, subd. (a)(16).)

4) States that a search warrant may also be issued upon any of the following grounds:

a) When the property was stolen or embezzled.

b) When the property or things were used as the means of committing a felony.

c) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing them from being discovered.

d) When the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.

e) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, or possession of matter depicting sexual conduct of a person under the age of 18 years, has occurred or is occurring.

f) When there is a warrant to arrest a person.

g) When a provider of electronic communication service or remote computing service has records or evidence, showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery.

h) When a provider of electronic communication service or remote computing service has records or evidence showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery.

i) When the property or things to be seized include an item or any evidence that tends to show a violation of the Labor Code, as specified.

j) When the property or things to be seized include a firearm or any other deadly weapon at the scene of, or at the premises occupied or under the control of the person arrested in connection with, a domestic violence incident involving a threat to human life or a physical assault.

k) When the property or things to be seized include a firearm or any other deadly weapon that is owned by, or in the possession of, or in the custody or control of, a person

described in subdivision (a) of Section 8102 of the Welfare and Institutions Code.

l) When the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms under specified provisions of the Family Code.

m) When the information to be received from the use of a tracking device constitutes evidence that tends to show that either a felony or a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code.

n) When a sample of the blood of a person constitutes evidence that tends to show a violation of misdemeanor driving under the influence and the person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test.

o) When the property or things to be seized are firearms or ammunition or both that are owned by, in the possession of, or in the custody or control of a person who is the subject of a gun violence restraining order. This final provision does not go into effect until January 1, 2016. (Pen. Code, § 1524, subd. (a).)

5) Provides that a search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing, or things and the place to be searched. (Pen. Code, § 1525.)

6) Requires a magistrate to issue a search warrant if he or she is satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence. (Pen. Code, § 1528, subd. (a).)

7) Prohibits a person from operating a vessel or manipulate water skis, an aquaplane, or a similar device while under the influence of an alcoholic beverage, any drug, or the combined influence of an alcoholic beverage and any drug. (Harb. & Nav. Code, § 655, subd. (b).)

8) Prohibits a person from operating any recreational vessel or manipulating any water skis, aquaplane, or similar device if the person has an alcohol concentration of 0.08 percent or more in his or her blood. (Harb. & Nav. Code, § 655, subd. (c).)

9) Prohibits a person from operating any vessel other than a recreational vessel if the person has an alcohol concentration of 0.04 percent or more in his or her blood. (Harb. & Nav. Code, § 655, subd. (d).)

10) Authorizes a peace officer who arrests a person for boating under the influence to ask that person to submit to chemical testing of his or her blood, breath, or urine for the purpose of determining the drug or alcohol content of the blood. (Harb. & Nav. Code, § 655.1.)

11) Provides that an officer shall also advise persons arrested for driving under the influence that he or she does not have the right to have an attorney present before stating whether he or she will submit to a test or tests, before deciding which test or tests to take, or during administration of the test or tests chosen, and that, in the event of refusal to submit to a test or

tests, the refusal may be used against him or her in a court of law. (Pen. Code, § 23612, subd. (a)(4).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "AB 1829 clarifies existing law and removes obsolete language regarding the arrest of a person suspected of operating a boat or vessel under the influence of alcohol and/or drugs."

2) **Background:** According to the background submitted by the author, "AB 1829 clarifies that an officer who arrests a person on suspicion of operating a vessel or watercraft while under the influence shall inform the person that he or she may be charged with a crime, has the right to refuse chemical testing, and that the officer has the authority to seek a search warrant to compel a blood draw if the person refuses to submit to, or fails to complete, a blood test. All of these items reflect current California law.

   "Given recent changes to case law and state statute, the Harbors and Navigation Code contains obsolete language regarding the arrest of a person suspected of operating a boat or vessel under the influence of alcohol and/or drugs. Specifically, existing law requires an officer to inform a person arrested for boating under the influence that a refusal to submit to, or failure to complete, the required chemical testing may be used against the person in a court of law and that the court may impose increased penalties for that refusal or failure, upon conviction, despite the fact that neither of those statements is accurate.

   "Vehicle Code Section 23612 provides that a person arrested for driving under the influence shall submit to chemical testing or face sanctions for the refusal to submit. The fact that the person refused testing can also be used as an aggravating factor when he or she is being sentenced for a conviction of driving under the influence. Conversely, despite the fact that similar language exists in the Harbors and Navigation Code, there is no analogous sanction for a person suspected of boating under the influence, largely because there is no comprehensive licensing scheme or implied consent standard."

3) **AB 538 (Levine):** Earlier this session, the legislature passed, and the governor signed AB 539 (Levine), Chapter 118, Statutes of 2015. This new law authorizes the issuance of a search warrant when all of the following apply:

   a) A sample of the blood of a person constitutes evidence that tends to show a violation of specified boating under the influence provisions;

   b) The person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test as required; and

   c) The sample will be drawn from the person in a reasonable, medically approved manner. (Pen. Code, § 1524, subd. (a)(16).)

   This bill conforms the notification requirements placed upon law enforcement to the provisions implemented by AB 539.

4) ***Missouri v. McNeely***: In *Missouri v. McNeely* (2013) 133 S.Ct. 1552, the United States Supreme Court held that the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every drunk-driving investigation sufficient to justify conducting a blood test without a warrant. Rather, the court directed that the matter be determined on a case-by-case assessment of the totality of the circumstances, in which the dissipation element is a factor in evaluating whether an exigency exists. "In those drunk-driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so." (*Id.* at p. 1561.)

   Before the *McNeely* decision, the California Supreme Court had applied older U.S. Supreme Court precedent, *Schmerber v. California* (1966) 384 U.S. 757, and held that the evanescent nature of blood alcohol created exigent circumstances and sufficient rationale for permitting warrantless chemical testing following a DUI arrest. (*See People v. Superior Court (Hawkins)* (1972) 6 Cal.3d 757, 761.)

   When *Missouri v. McNeely* was decided, there was nothing in the statute listing the types of evidence that may be obtained by means of a search warrant that would authorize a warrant for a DUI blood draw unless the crime under investigation was a *felony*. The Legislature subsequently amended the statute pertaining to grounds for the issuance of a search warrant to allow law enforcement to obtain one on this basis. (Pen. Code, § 1524, subd. (a)(13).) However, the amendment to the statute did not cover misdemeanor offenses involving boating under the influence.

5) **Boating Accident Statistics**: According to a 2013 report by the California State Parks Division of Boating and Waterways, between 2009 and 2013 32% of all boating fatalities in the state involved alcohol. (See *2013 California Recreational Boating Accident Statistics*, p. 17, http://dbw.ca.gov/Reports/BSRs/2013/2013_AccidentStats_CA_05_08_2014.pdf .)

6) **Advisement Regarding Presence of Attorney:** This bill states that persons arrested for boating under the influence be advised they do not have a right to have an attorney present before stating whether he or she will submit to the chemical testing, before deciding which chemical test or tests to take, or during the administration of the chemical test or tests chosen. Advising a criminal defendant that they do not have a right to have their attorney present and that they cannot consult an attorney seems contrary to public policy. However, this provision is consistent with existing law. Existing California law states that an officer shall advise persons arrested for driving under the influence that "he or she does not have the right to have an attorney present before stating whether he or she will submit to a test or tests, before deciding which test or tests to take, or during administration of the test or tests chosen, and that, in the event of refusal to submit to a test or tests, the refusal may be used against him or her in a court of law." (Pen. Code, § 23612, subd. (a)(4).) Therefore, this provision of the bill is consistent with existing California law.

7) **Argument in Support**: According to the *California State Sheriffs' Association,* "We are pleased to sponsor your measure, Assembly Bill 1829, which would clarify existing law to provide that an officer who arrests a person on suspicion of operating a vessel or watercraft while under the influence shall inform the person that he or she may be charged with a crime, has the right to refuse chemical testing, and that the officer has the authority to seek a search

warrant to compel a blood draw if the person refuses to submit to, or fails to complete, a blood test.

"Vehicle Code Section 23612 provides that a person arrested for driving under the influence shall submit to chemical testing or face sanctions for the refusal to submit. The fact that the person refused testing can also be used as an aggravating factor when he or she is being sentenced for a conviction of driving under the influence. Conversely, despite the fact that similar language exists in the Harbors and Navigation Code, there is no analogous sanction for a person suspected of boating under the influence, largely because there is no comprehensive licensing scheme or implied consent standard.

"Additionally, recent United Supreme Court case law (*Missouri v. McNeely* (2013) S.Ct.1552) has altered the process whereby an officer can compel a blood draw in connection with the arrest of a person suspected of operating a motor vehicle or vessel while under the influence of alcohol and/or drugs. To address both of the above situations, the Harbors and Navigation code should be updated to accurately reflect existing statute and case law."

8) **Prior Legislation**:

a) AB 53p (Levine) Chapter 118, Statutes of 2015, allowed law enforcement to obtain a search warrant to test the blood of a person suspected of operating a marine vessel while under the influence of drugs and/or alcohol.

b) AB 1014 (Skinner), Chapter 872, Statutes of 2014, provided, in pertinent part, that a search warrant may be issued when the property or things to be seized are firearms or ammunition that are in the custody or control of, or is owned or possessed by, a person who is the subject of a gun violence restraining order.

c) SB 717 (DeSaulnier), Chapter 317, Statutes of 2013, authorized the issuance of a search warrant to allow a blood draw to be taken from a person in a reasonable, medically approved manner as evidence that the person has violated specified provisions relating to driving under the influence, and the person has refused a peace officer's request to submit to, or failed to complete a blood test.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Sheriffs' Association

Opposition

None

Analysis Prepared by: Gabriel Caswell / PUB. S. / (916) 319-3744

Date of Hearing: April 5, 2016
Consultant: Matt Dean

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1848 (Chiu) – As Amended March 15, 2016

SUMMARY: Requires local law enforcement agencies to periodically update the Sexual Assault Forensic Evidence Tracking database (SAFE-T) on the disposition of all sexual assault evidence kits (rape kits) in their custody. Specifically, **this bill**:

1) Finds and declares that there is a significant public interest in knowing whether rape kits have been tested and if the kits have not been tested, the reasons why they were not tested.

2) Requires participation by law enforcement agencies in the SAFE-T database.

3) Requires law enforcement agencies, on a schedule set by the Department of Justice (DOJ) to submit via SAFE-T the:

   a) Number of rape kits collected during the set period,

   b) Number of kits where biological evidence was submitted to a DNA laboratory for analysis,

   c) Number of kits from which a DNA profile hit was generated, and

   d) Reasons why a particular rape kit was not submitted to a DNA laboratory for testing.

4) Requires DNA laboratories to enter into SAFE-T, every 120 days, and the reasons why any particular rape kit has not been tested.

5) States that SAFE-T shall not contain any identifying information about a victim or a suspect, any DNA profiles, or any information that would impair a pending criminal investigation.

6) Requires DOJ to report to the Legislature quarterly a summary of the information entered into SAFE-T.

7) States that, beside the required report to the Legislature, all contents of SAFE-T shall be confidential, and no law enforcement agency or laboratory may be compelled in a civil or criminal proceeding to disclose the contents of SAFE-T unless the contents contain exculpatory evidence for a criminal defendant.

8) Finds and declares that it is necessary to keep SAFE-T's contents confidential in order to protect victims of crime.

EXISTING LAW:

1) Requires an adult arrested for or charged with a felony and a juvenile adjudicated for a felony to submit deoxyribonucleic acid (DNA) samples. (Pen. Code, § 296.)

2) Establishes the DNA and Forensic Identification Database and Data Bank Program to assist federal, state, and local criminal justice and law enforcement agencies within and outside California in the expeditious and accurate detection and prosecution of individuals responsible for sex offenses and other crimes, the exclusion of suspects who are being investigated for these crimes, and the identification of missing and unidentified persons, particularly abducted children. (Pen. Code, §§ 295, 295.1.)

3) Encourages DNA analysis of rape kits within the statute of limitations, which states that a criminal complaint must be filed within one year after the identification of the suspect by DNA evidence, and that DNA evidence must be analyzed within two years of the offense for which it was collected. (Pen. Code, § 680, subd. (b)(6).)

4) Encourages law enforcement agencies to submit rape kits to crime labs within 20 days after the kit is booked into evidence. (Pen. Code, § 680, subd. (b)(7)(A)(i).)

5) Encourages the establishment of rapid turnaround DNA programs, where the rape kit is sent directly from the facility where it was collected to the lab for testing within five days. (Pen. Code, § 680, subds. (b)(7)(A)(ii) and (E).)

6) Encourages crime labs to do one of the following:

   a) Process rape kits, create DNA profiles when possible, and upload qualifying DNA profiles into CODIS within 120 days of receipt of the rape kit; or

   b) Transmit the rape kit to another crime lab within 30 days to create a DNA profile, and then upload the profile into CODIS within 30 days of being notified about the presence of DNA. (Pen. Code, § 680, subd. (b)(7)(B).)

7) Requires law enforcement agencies to inform victims in writing if they intend to destroy a rape kit 60 days prior to the destruction of the rape kit, when the case is unsolved and the statute of limitations has not run. (Pen. Code, §§ 680, subds. (e) and (f), 803.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "When tested, DNA evidence can be an incredibly powerful tool to solve and prevent crime. It can identify an unknown assailant and confirm the presence of a known suspect. It can affirm the survivor's account of the attack and discredit the suspect. It can connect the suspect to other crime scenes. It can exonerate innocent suspects.

   "However, as we've seen over the past few years, there has been widespread mismanagement of DNA evidence in sexual assault cases in many jurisdictions. Survivors of sexual assault

who are submitting sexual assault evidence kits aren't getting the answers they need and deserve.

"To accomplish these things, however, rape kits must be tested. Right now, some kits are analyzed, but a vast majority is not. In California, we know there is a backlog of over 6,100 kits - but we don't know how long they've been sitting on the shelf, or if there were or were not legitimate reasons why they were not tested.

"Currently, there is no comprehensive data on how many rape kits are collected and the reasons why kits are not tested. To get at the crux of the backlog problem, we need to know how many kits are collected each year, and if they're not analyzed, we need to know why.

"AB 1848 aims to solve this problem by directing law enforcement agencies to track how many sexual assault evidence kits they collect and the number of kits they analyze each year, and further directing agencies to report annually to DOJ their reasons for not analyzing sexual assault evidence kits.

"Data and transparency are a necessary part of the solution. The data collected through AB 1848 could help policy makers consider whether law enforcement agencies' current approaches in this area need to change or whether or not law enforcement needs additional resources to better manage the processing of these kits."

2) **CODIS and SAFE-T**: According to background submitted by the author, "The local law enforcement investigator may request that a crime lab analyze the sexual assault evidence kit to try to match the DNA profile to a suspect in the investigation. The lab can then upload the profile to the combined DNA Index System (CODIS), a network of local, state, and federal databases that allows law enforcement agencies to test DNA profiles against one another. Through this process, labs will sometimes obtain the name of a previously unknown suspect or match multiple cases where the suspect remains unknown.

"The value of DNA evidence in the investigation and prosecution of sexual assault crimes makes these evidence kits critical for law enforcement.

"Even in instances where the identity of assailants is known, forensic analysis often helps identify repeat offenders. However, there is no state or federal law that requires agencies to request analysis of every sexual assault evidence kit."

SAFE-T was created by DOJ in 2015 in part to help track how many rape kits were not being tested and why, to help determine the scope of the problem and to determine if mandatory testing may lead to the apprehension of more repeat offenders or the exoneration of more criminal defendants.

3) **Tracking of Rape Kit Tests**: A recent report by the California State Auditor found that law enforcement agencies rarely document reasons for not analyzing sexual assault evidence kits. (California State Auditor, Sexual Assault Evidence Kits (Oct. 2014).) <https://www.bsa.ca.gov/pdfs/reports/2014-109.pdf> Specifically, the report found that "[i]n 45 cases . . . reviewed in which investigators at the three agencies we visited did not request a kit analysis, the investigators rarely documented their decisions. As a result, we often could not determine with certainty why investigators decided that kit analysis was not needed.

Among the 15 cases we reviewed at each of the three locations, we found no examples of this documentation at either the Sacramento Sheriff or the San Diego Police Department, and we found only six documented explanations at the Oakland Police Department. Investigative supervisors at both the Sacramento Sheriff and the San Diego Police Department indicated that their departments do not require investigators to document a decision not to analyze a sexual assault evidence kit. The lieutenant at the Oakland Police Department's Special Victims Section stated that, during the period covered by our review, the section expected such documentation from its investigators in certain circumstances, but that it was not a formal requirement at that time." (*Id.* at p. 23.)

Upon a more in-depth review of the individual cases, the report found that analysis of the kits would not have been likely to further the investigation of those cases. The "decisions not to request sexual assault evidence kit analysis in the individual cases we reviewed appeared reasonable because kit analysis would be unlikely to further the investigation of those cases. We reviewed specific cases at each agency in which investigators did not request analysis. Our review included 15 cases from each of the three agencies we visited with offenses that occurred from 2011 through 2013, for a total of 45 cases. In those cases, we did not identify any negative effects on the investigations as a result of decisions not to request analysis. We based our conclusions on the circumstances present in the individual cases we reviewed, as documented in the files for the 45 cases and as discussed with the investigative supervisors." (*Id.* at p. 21.)

Even though the individual reasons for not testing the kits was found to be reasonable, the report still stressed the need for more information about why agencies decide to send some kits but not others. It would benefit not only investigators, but the public as well, because requiring investigators to document their reasons for not requesting kit analysis would assist agencies in responding to the public concern about unanalyzed kits. Doing so would allow for internal review and would increase accountability to the public. (*Id.* at pp. 23-24.)

4) **Argument in Support**: According to *Attorney General Kamala Harris*, "There is no doubt that forensic evidence is one of the most powerful investigatory tools made available to law enforcement in the last century. Analysis of DNA collected at crime scenes can dramatically enhance investigations into previously unsolvable cases, and this technology has led to countless more offenders held accountable. However, when a crime scene is the body of a woman who has been sexually assaulted, the collection of this evidence often comes at the cost of significant retraumatization. Forensic examination using what is referred to as a 'rape kit' typically involves a number of highly invasive procedures and can last several hours. This process is nevertheless worthwhile when it helps bring justice to the victim.

"Recent years have seen a loudening outcry over a so-called 'rape kit backlog' in California and nationwide – allegations that many sexual assault evidence kits, possibly thousands, remain untested. There is no doubt that when evidence that could lead to the identification of an unknown assailant goes unanalyzed without good cause, some miscarriage of justice has occurred. At the same time, there are myriad reasons why a local agency a sample may not be tested—many of which may well be legitimate—including resource limitations and decisions made as part of the prosecutorial process. In order to effectively address any perceived epidemic unanalyzed kits, we must better understand the reasons why kits are not tested.

"A 2014 report by the California State Auditor into this issue identified two critical areas where data is severely lacking within the state: First, 'no comprehensive information is currently available about the number of sexual assault evidence kits that local law enforcement agencies collect annually or how many of those kits are analyzed.' Second, 'no comprehensive data exist about the reasons some sexual assault evidence kits in California are not analyzed.'

"In response to this audit, the Attorney General's Bureau of Forensic Services affirmatively created what is known as the Sexual Assault Forensic Evidence Tracking (SAFE-T) system, which allows for the collection of precisely this information. However, there is no requirement that the system be utilized by local law enforcement.

"AB 1848 will enable state lawmakers to bring data-driven solutions to a highly emotional issue. The bill would simply direct local agencies to report to the California Department of Justice how many kits they collect, and how many they analyze. In addition, agencies would be required to provide the state with vital information on why kits are not submitted to labs or analyzed. The Attorney General would regularly report on this information to the Legislature, providing meaningful illumination to the realities of sexual assault investigations.

"The Attorney General is proud to support of AB 1848 as a continuation of her long history of working in support of forensic analysis. In 2012, this office announced that the backlog of untested DNA evidence in state labs had been eliminated for the first time ever; since then, our Bureau of Forensic Services has assisted counties in clearing their own backlogs. In 2014, the Attorney General's innovative RADS program received the United States Department of Justice's Award for Professional Innovation in Victim Services, and in 2015 the program was awarded a $1.6 million grant to test sexual assault evidence kits at local laboratories."

5) **Argument in Opposition**: According to the *California State Sheriffs' Association*, "We share your intent that sexual assaults are investigated and perpetrators not go unpunished. In 2014, CSSA worked with Assembly Member Nancy Skinner to amend her AB 1517 into a final product that will help achieve those goals without being overly burdensome. However, by requiring law enforcement agencies to provide statistics to DOJ, AB 1848 will create another unfunded mandate and would place significant cost burdens on these agencies in terms of resources and personnel.

"Existing law permits law enforcement to notify a victim about the status of his or her rape kit upon the victim's request as well as requires law enforcement to notify a victim if his or her rape kit is going to be disposed or not tested. We do not feel that this balanced approach requires alteration.

"Local law enforcement agencies are still dealing with the effects of significant budget cuts over the last several years while trying to maintain critical services. Adding an additional reporting requirement would divert limited resources away from providing current services."

6) **Related Legislation**:

a) AB 909 (Quirk), would require a law enforcement agency responsible for taking or processing rape kit evidence to annually report, by July 1 of each year, to the Department of Justice information pertaining to the processing of rape kits, including the number of rape kits the law enforcement agency collects, the number of those rape kits that are tested, and the number of those rape kits that are not tested. For those rape kits that are not tested, the bill would require the law enforcement agency to also report the reason the rape kit was not tested. This bill is being held under submission in the Assembly Committee on Appropriations.

b) AB 2499 (Maienschein), would update the SAFE-T database to allow victims of sexual assault to have secure access to the location and information regarding their sexual assault evidence kits. This bill has been set for hearing in the Assembly Committee on Public Safety for April 12, 2016.

7) **Prior Legislation**:

a) AB 1517 (Skinner), Chapter 874, Statutes of 2014, encourages law enforcement agencies to submit sexual assault forensic evidence received by the agency to a crime lab within 20 days after it is booked into evidence, and ensure that a rapid turnaround DNA program is in place to submit forensic evidence collected from the victim of a sexual assault to a crime lab within 5 days after the evidence is obtained from the victim.

b) AB 558 (Portantino), of the 2009 2010, would have required local law enforcement agencies responsible for taking or collecting rape kit evidence to annually report to the Department of Justice statistical information pertaining to the testing and submission for DNA analysis of rape kits. This bill was vetoed by Governor Schwarzenegger.

REGISTERED SUPPORT / OPPOSITION:

Support

Department of Justice (Sponsor)
Alameda County District Attorney's Office
California Coalition Against Sexual Assault
California Partnership to End Domestic Violence
National Council of Jewish Women - California
Planned Parenthood Affiliates of California

Opposition

California State Sheriff's Association

Analysis Prepared by: Matt Dean / PUB. S. / (916) 319-3744

Date of Hearing: April 5, 2016
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1877 (Linder) – As Amended March 15, 2016

SUMMARY: Increases the penalties for the crime of indecent exposure. Specifically, **this bill**:

1) Makes the first conviction of indecent exposure occurring in a prison or jail punishable as a felony in state prison.

2) Makes the first conviction of indecent exposure committed by a person required to register as a sex offender punishable as a felony in state prison.

EXISTING LAW:

1) Provides that a person who willfully and lewdly exposes his or her private parts in a public place or in any place where there are others present to be offended or annoyed is guilty of indecent exposure. (Pen. Code, § 314.)

2) Provides that person who willfully and lewdly procures, counsel, or assists any person to expose himself or take part in any model artist exhibition, or to make any other exhibition of himself or herself to public view, or the view of another, such as is offensive to decency is guilty of indecent exposure. (Pen. Code, § 314.)

3) Provides that indecent exposure is punishable as follows:

   a) A first conviction is punishable as a misdemeanor, and second or subsequent conviction is a felony punishable in the state prison; except,

   b) A first conviction when committed after having entered an inhabited dwelling, trailer, or building without consent is an alternate felony/misdemeanor punishable in the county jail for up to one year, or in the state prison; and,

   c) A first conviction after a prior conviction for lewd acts with a minor is a felony punishable in state prison. (Pen. Code, § 314.)

4) Requires a person convicted of indecent exposure to register as a sex offender for life. (Pen. Code, § 290, subd. (c).)

5) States that if a person is convicted of one or more felonies committed while the person is confined in state prison, … and the law either requires the term to be served consecutively, or the court imposes consecutive terms, then the term of imprisonment for all the convictions that the person is required to serve consecutively shall commence from the time the person

would otherwise have been released from prison. (Pen. Code, § 1107.1, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 1877 seeks to protect female staff in prisons or county jails by strengthening the punishment for indecent exposure, which can be used as a weapon against those who provide services to inmates. The legislature should always aim to protect those who put their lives at risk to keep the public safe. By increasing the punishment from a misdemeanor to a felony when indecent exposure occurs in prison, or if the individual is a registered sex offender, the parties involved will have a higher incentive to prosecute such cases."

2) **Prison Overcrowding:** In January 2010, a three-judge panel issued a ruling ordering the State of California to reduce its prison population to 137.5% of design capacity because overcrowding was the primary reason that CDCR was unable to provide inmates with constitutionally adequate healthcare. (*Coleman/Plata vs. Schwarzenegger* (2010) No. Civ S-90-0520 LKK JFM P/NO. C01-1351 THE.) The United State Supreme Court upheld the decision, declaring that "without a reduction in overcrowding, there will be no efficacious remedy for the unconstitutional care of the sick and mentally ill" inmates in California's prisons. (*Brown v. Plata* (2011) 131 S.Ct. 1910, 1939; 179 L.Ed.2d 969, 999.)

   After continued litigation, on February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

   - 143% of design bed capacity by June 30, 2014;
   - 141.5% of design bed capacity by February 28, 2015; and,
   - 137.5% of design bed capacity by February 28, 2016.

   A recent report on the status of corrections notes:

   "The Department's total adult inmate population as of December 9, 2015, was 127,468, of which 112,510 were housed in the Department's adult institutions, and the remaining 14,958 were housed in fire camps or contract beds. The December 9, 2015 institution population was 136.0 percent of design capacity, or 1,212 inmates below the 137.5-percent population cap based on currently constructed capacity. While the activation of three infill facilities will add capacity of 3,267, fall 2015 population projections estimate the total inmate population will increase to 131,092 by June 2020, an increase of 3,624 inmates over the December 9, 2015 population. Therefore, without further population reduction measuresor capacity, the state will not be able to further reduce the use of contract beds, or close state-owned facilities." (*An Update to the Future of California Corrections*, January 2016, p. 25, <http://www.cdcr.ca.gov/Blueprint-Update-2016/An-Update-to-the-Future-of-California-Corrections-January-2016.pdf>.)

   In other words, the state needs a "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK

DAD (PC), 3-Judge Court, *Coleman v. Brown*, *Plata v. Brown* (2-10-14).) However, the prison population is currently projected to increase.

CDCR has provided this Committee the following data regarding the number of indecent exposure incidents at its institutions:

Indecent Exposure Incidents	Totals			
	2012	2013	2014	2015
Total Number of Incidents - Indecent Exposure Incidents	1015	1011	1159	1257
Number of DA Referrals - Indecent Exposure Incidents[1]	1029	1033	1172	1259

This bill also applies to inmates in jails. As written, the bill would apply to pre-trial detainees and persons serving a sentence under realignment. So, presumably the number of felony convictions which would mandate a state prison sentence could be much higher than the numbers provided by CDCR. Given the high number of these incidents which occur annually, this bill raises concerns for maintaining a durable solution to prison overcrowding.

3) **CDCR Policies on Indecent Exposure**: In 2007, CDCR enacted new policies for handling incidents of indecent exposure by inmates after a female officer sued the department and the court determined that CDCR could be held liable for failure to correct a hostile work environment by failing to take prompt and reasonable corrective action to address inmate misconduct. (See *Freitag v. Ayers* (2006) 468 F.3d 528.)

CDCR's Department Operations Manual states, "An inmate who engages in indecent exposure or sexual disorderly conduct shall be subject to a variety of security measures in an attempt to identify, prevent, reduce, and eliminate the opportunity to repeat the behavior." (Department Operations Manual, Article 25, § 52100.2) These security measures are "designed to decrease the opportunity for the inmate to repeat the behavior and/or minimize the impact that the behavior has on prison staff and others." There are two types of security measures: immediate security precautions and post-disciplinary restrictions. (*Id.* at § 52100.4.)

Security precautions include: (1) designating a cell door with a yellow placard, window covering, or other device to both alert staff to an inmate's propensity to engage in the prohibited conduct, as well as to limit the inmate's ability to see staff while engaging in the misconduct; (2) requiring the inmate to wear an exposure control jumpsuit to limit the inmate's ability to expose himself; (3) temporary restrictions from the yard or other common areas which may provide a venue for the behavior; and (4) substitution of setting to reduce

[1] The referrals to the district attorneys are higher than the total number is because one incident can involve multiple victims or multiple defendants.

the possibility of the behavior impacting staff, such as placement in administrative segregation. (*Id.* at § 52100.4.) What security measures are used and their duration, depends on whether the indecent exposure occurred in a common area as opposed to a cell, and whether the offense is a first or subsequent offense. However, yellow cell front coverings are required for all indecent exposure incidents. (*Id.* at § 52100.4.)

In addition to the security measures, an inmate who commits an act of indecent exposure is also subject to disciplinary restrictions after a finding of guilt in a disciplinary hearing. An inmate with a pending disciplinary hearing must be placed in an administrative segregation unit, and if found guilty of indecent exposure through a disciplinary hearing can be placed in a secured housing unit. The inmate will also be subject to privilege losses. A first offense of indecent exposure can result in a loss of privileges, including canteen, appliance, vendor packages, phone, and personal property, of up to 90 days. A second offense can result in a loss of any or all of those privileges for up to 180 days. (*Id.* at § 52100.4.) In addition to loss of privileges, an inmate who commits indecent exposure may be subject to a loss of credits. Further, a guilty finding for indecent exposure on a disciplinary report may result in a prohibition of family visits, which may be permanent. (*Id.* at § 52100.4.)

Finally, CDCR requires that all indecent exposure incidents be referred to the district attorney. This referral is to include an explanation of the reason why indecent exposure misdemeanor cases require prosecution, namely to obtain felony convictions for repeat offenders. (*Id.* at § 52100.4.) CDCR has recognized that historically district attorneys have not readily prosecuted misdemeanors committed by inmates in prison. Therefore, CDCR aggressively seeks prosecution and conviction of the misdemeanor charge, thereby allowing future violations to be charged as felonies.

4) **Argument in Support**: According to the *Sacramento County District Attorney's Office*, "Across the state, in counties that have prisons in their jurisdictions, there have been an explosion of indecent exposure (Penal Code section 314) cases occurring in state prisons. In Sacramento County alone, our office currently reviews 15-20 cases almost every week. In many cases, the inmates target female staff members, usually civilians like nurses or psych technicians, occasionally psychiatrists and female correctional officers, to humiliate and intimidate them by standing on their bunks or toilets to force the female staff to see them masturbating. It is particularly bad when staff are assigned to watch an inmate, even after having been the victim of indecent exposure earlier in the same day from the same inmate."

5) **Argument in Opposition**: According to the *California Public Defenders Association*, "AB 1877 would amend Penal Code section 314 to punish a first conviction of lewd conduct in a county jail or prison more harshly than such lewd conduct in public places. It would increase the penalty from a six month misdemeanor to a state prison felony.

"Under existing law, Penal Code section 314 punishes a first conviction with a maximum of six months in county jail. Second or subsequent convictions are punishable by state prison.

"Although county jail and state prison employees may be confronted by lewd conduct by pretrial detainees and prisoners more often than the general public, they also may be less sensitized to such conduct. Additionally, there are procedures to write up inmates for rule breaking that deal with such behavior with lesser sanctions, i.e., loss of good conduct credits for 115 Rule Violations in state prison.

"Moreover, many of the individuals in California jails and prisons are mentally ill....

"Such mentally ill individuals are more likely to act out and be unable to conform their behaviors. Punishing the mentally ill for being mentally ill by charging them with a felony for a non-violent offense is bad public policy....

"The federal court order mandating that California comply with caps on its prison population remains in effect. AB 1877 undercuts the state's effort to comply with that order for no appreciable gain."

6) **Related Legislation**: AB 2803 (Salas) makes it a felony for a prisoner to distribute in any state prison facility or local jail prescribed communications that contain an overt or disguised request or instructions to cause harm, great bodily injury, or death to another person. AB 2803 is pending hearing in this Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Amador County District Attorney
California District Attorneys Association
Kern County District Attorney
Sacramento County District Attorney

Opposition

American Civil Liberties Union of California
California Attorneys for Criminal Justice
California Public Defenders Association
Legal Services for Prisoners with Children

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744

Date of Hearing: April 5, 2016
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1945 (Mark Stone) – As Amended March 15, 2016

SUMMARY: Authorizes a child welfare agency to access sealed juvenile records for limited purposes. Specifically, **this bill**:

1) Authorizes a county child welfare agency responsible for the supervision and placement of a minor or non-minor dependent of the court to access sealed juvenile records for the limited purpose of determining an appropriate placement or service that has been ordered by the court for that dependent.

2) Allows the child welfare agency to share the information in the sealed record with the court and with service and placement providers for the sole purpose of implementing the court ordered service or placement.

3) States that access to the sealed records pursuant to these provisions shall not be construed as a modification of the court's order dismissing the petition and sealing the case records.

4) Allows the court to seal a record based on a specified serious or violent offenses if the original charge was reduced to a misdemeanor.

EXISTING LAW:

1) Provides that, if a minor satisfactorily completes an informal program of supervision, probation as specified, or a term of probation for any offense other than a specified serious, sexual, or violent offense, then the court shall order sealed all records pertaining to that dismissed petition in the custody of the juvenile court. (Welf. & Inst. Code, § 786, subd. (a).)

2) Requires the court to send a copy of the order of dismissal and sealing to the agencies named in the order and directing the agencies to destroy the sealed records. (Welf. & Inst. Code, § 786, subd. (a).)

3) Allows the court access a file that has been sealed for the limited purpose of verifying the prior jurisdictional status of a ward who is petitioning the court to resume its dependency or delinquency jurisdiction. (Welf. & Inst. Code, § 786, subd. (f)(1).)

4) Gives the prosecuting attorney and the probation department of any county access to those records after they are sealed for the limited purposes. (Welf. & Inst. Code, § 786, subd. (f)(1).)

5) States that access for these limited purposes shall not be considered an unsealing of the records. (Welf. & Inst. Code, § 786, subd. (f).)

6) Provides that five years or more after the jurisdiction of the juvenile court has terminated over a person adjudged a ward of the court or after a minor appeared before a probation officer, or, in any case, at any time after the person has reached the age of 18, the person or county probation officer, with specified exceptions, may petition the juvenile court for sealing of the records, including arrest records, relating to the person's case, in the custody of the juvenile court, the probation officer, or any other agency or public official. (Welf. & Inst. Code, § 781, subd. (a).)

7) States that once the court has ordered the person's records sealed, the proceedings in the case shall be deemed never to have occurred, and the person may reply accordingly to any inquiry about the events. (Welf. & Inst. Code, § 781, subd. (a).)

8) Permits the court to access a file that has been sealed for the limited purpose of verifying the prior jurisdictional status of the ward who is petitioning the court to resume its jurisdiction, as specified. This access is not to be deemed an unsealing of the records. (Welf. & Inst. Code, § 781, subd. (e).)

9) Allows a judge of the juvenile court in which a petition was filed to dismiss the petition, or to set aside the findings and dismiss the petition, if the court finds that the interests of justice and the welfare of the person who is the subject of the petition require that dismissal, or if it finds that he or she is not in need of treatment or rehabilitation. The court has jurisdiction to order dismissal or setting aside of the findings and dismissal regardless of whether the person who is the subject of the petition is, at the time of the order, a ward or dependent child of the court. (Welf. & Inst. Code, § 782.)

10) Allows the probation officer to destroy all records and papers in the proceedings concerning a minor after five years from the date on which the jurisdiction of the juvenile court over the minor is terminated. (Welf. & Inst. Code, § 826.)

11) States that any person who was under the age of 18 when he or she was arrested for a misdemeanor may petition the court in which the proceedings occurred or, if there were no court proceedings, the court in whose jurisdiction the arrest occurred, for an order sealing the records in the case, including any records of arrest and detention, in certain circumstances. (Pen. Code, § 851.7.)

12) Provides that a person who was under the age of 18 at the time of commission of a misdemeanor and is eligible for, or has previously received expungement relief, may petition the court for an order sealing the record of conviction and other official records in the case, including arrest records and records relating to other offenses charged in the accusatory pleading, whether the defendant was acquitted, or the charges dismissed. Thereafter the conviction, arrest, or other proceeding shall be deemed not to have occurred, and the petitioner may answer accordingly any question relating to their occurrence. (Pen. Code, § 1203.45, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 1945 is a clean-up proposal for my AB 666 from last year. It accomplishes the following:

   "Ensures child welfare agencies have limited access to valuable information necessary for making appropriate foster care placements and service recommendations for a child's safety and well-being; and

   "Clarifies that a 707 charge that has been reduced by the court to a misdemeanor will qualify an individual for auto-sealing of records, even if the misdemeanor for which the 707 charge is reduced is a wobbler. This was the intent of AB 666. Clearer legislative guidance is needed to pursue sealing in these limited circumstances to allow youth to further their education and employment goals."

2) **Sealing and Dismissals of Juvenile Records**: Juvenile court records generally must be destroyed when the person of record reaches the age of 38 unless good cause is shown for maintaining those records. (Welf. & Inst. Code, § 826.) The person of record also may petition to destroy records retained by agencies other than the court. (Welf. & Inst. Code, § 826, subd. (b).) The request must be granted unless good cause is shown for retention of the records. (Welf. & Inst. Code, § 826.) When records are destroyed pursuant to the above provision, the proceedings "shall be deemed never to have occurred, and the person may reply accordingly to an inquiry." (Welf. & Inst. Code, § 826, subd. (a).) Courts have held that the phrase "never to have occurred" means that the juvenile proceeding is deemed not to have existed. (*Parmett v. Superior Court (Christal B.)* (1989) 212 Cal.App.3d 1261, at 1267.)

   Minors adjudicated delinquent in juvenile court proceedings may petition the court to have their records sealed unless they were found to have committed certain serious offenses. (Welf. & Inst. Code, § 781.) To seal a juvenile court record, either the minor or the probation department must petition the court. (*Ibid.*) Juvenile court jurisdiction must have lapsed five years previously, or the person must be at least 18 years old. (Welf. & Inst. Code, § 781, subd. (a).) The records are not sealed if the person of record has been convicted of a felony or a misdemeanor involving moral turpitude. (*Ibid.*) No offenses listed in Welfare and Institutions Code section 707, subdivision (b) may be sealed if the juvenile was 14 years or older at the time of the offense. Additionally, there can be no pending civil litigation involving the incident.

   In 2014, the legislature enacted a process for automatic juvenile record sealing (i.e. without a petition from the minor) in cases involving satisfactorily-completed informal supervision or probation, except in cases involving serious offenses, namely Welfare and Institutions Code section 707, subdivision (b) offenses. (Welf. & Inst. Code, § 786.) When the record is sealed, the arrest in the case is deemed never to have occurred. (*Ibid.*) The court must order all records in its custody pertaining to the petition sealed. However, the prosecuting attorney and the probation department can access these records after they are sealed for the limited purpose of determining whether the minor is eligible for deferred entry of judgment. Also, the court may access the sealed file for the limited purpose of verifying the prior jurisdictional status of a ward who is petitioning the court to resume its jurisdiction. (*Ibid.*)

Last year there were two follow up measures which permit the probation department and district attorney to view the sealed records for several other limited purposes, such as to determine whether a minor is ineligible for informal supervision, to comply with the requirements of federal Title IV-E, and for purposes of determining a minor's prior program referrals and risk-needs assessments.

In a similar fashion, this bill will allow county child welfare agencies responsible for the supervision and placement of a minor or non-minor dependent of the court to access sealed juvenile records for purposes of determining appropriate placement and services.

3) **Welfare and Institutions Code section 707, subdivision (b) Adjudications**: The current automatic sealing provisions prohibit the sealing of the serious, sexual, or violent offenses listed in Welfare and Institutions Code 707, subdivision (b) (hereinafter 707(b)) except in cases where the offense was reduced to a lesser included offense.

In *In re G.Y.* (2015) 234 Cal.App.4th 1196, the appellate court reviewed the companion statute on juvenile record sealing after appellant filed a petition to seal his juvenile records pertaining to an assault with a firearm case that occurred when he was 17 years old. (Welf. & Inst. Code, § 781.) The court rejected the petitioner's argument that because the offenses were reduced to misdemeanors, they were no longer a bar to sealing the records. The controlling question is whether an offense is listed in section 707(b), not whether it is classified as a felony or a misdemeanor. The statute clearly says that the juvenile court does not have authority to seal records in any case in which (1) the juvenile court had found the person committed an offense listed in 707(b), and (2) the offense was committed when the person was 14 years or older. (*Id.* at p. 1201.)

This bill allows a person who has had a 707(b) offense reduced to a misdemeanor to obtain an automatic sealing of the records, if the person otherwise qualifies. Out of the 30 offenses listed in 707(b), only a handful qualify as alternate felony/misdemeanors. These include assault with a deadly weapon or assault with force likely to produce great bodily injury, shooting a firearm into an occupied dwelling, and witness or victim intimidation. Therefore, the change proposed by this bill is not as far-reaching as it initially appears.

It should be noted that currently both juvenile record sealing statutes contain the same limitation on sealing 707(b) offenses. However, this bill only amends the automatic sealing provisions (Welf. & Inst. Code, § 786), thereby creating an inconsistency in the statutes. Should Welfare and Institutions Code section 781 also be amended?

4) **Argument in Support**: According to the *California Attorneys for Criminal Justice*, "AB 1945 would allow some flexibility for county child welfare agencies responsible for the supervision and placement of a minor or dependent to access a record that has been ordered sealed for the limited purpose of determining an appropriate placement or service. ...

"AB 1945 reflects a progressive view that those juveniles who have demonstrated their ability to overcome past wrongdoings have earned the rights to have their criminal history sealed from the view of others. This can give those individuals the greatest opportunity to live productive lives in their communities.

"We all know too well the tragic and sometimes life-long consequences individuals suffer

from having a criminal record. Whether it is employment, housing, government benefits, or any number of other areas, having a criminal conviction, even as a minor, can do irreparable harm when trying to attain the above. AB 1945 continues the step forward to remove obstacles for youth."

5) **Argument in Opposition**: According to the *California District Attorneys Association*, "The offenses for which juvenile records cannot be sealed (found in WIC 707(b)) are among the most serious and violent offenses that a person can be charged with. The nature of these particular offenses is precisely why the preservation of and access to those records of criminal history are so critical to law enforcement. Under the record sealing provisions enacted over the last two years, even we as prosecutors are largely prohibited from accessing sealed records.

"AB 1945, as currently drafted, would additionally allow for records to be sealed in cases where a person was convicted of assault with a deadly weapon, assault with force likely to cause great bodily injury, discharge of a firearm into an occupied dwelling, and witness intimidation, just to name a few.

"Just last year, California's Sixth District Court of Appeal held that records of 707(b) offenses could not be sealed simply because a court later reduced them to misdemeanors. (*In re G.Y.* 234 Cal.App.4th 1196.) This bill would overturn that decision."

6) **Prior Legislation**:

a) AB 666 (Stone), Chapter 368, Statutes of 2015, requires records in the custody of law enforcement agencies, the probation department, or the Department of Justice to also be sealed, in a case where the court has ordered a juvenile record sealed.

b) AB 989 (Cooper), Chapter 375, Statutes of 2015, authorizes district attorneys and probation departments to access sealed records for additional limited purposes.

c) SB 1038 (Leno), Chapter 249, Statutes of 2014, provides for the automatic dismissal of juvenile petitions and sealing of records, as specified, in cases where a juvenile offender successfully completes probation.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union
California Attorneys for Criminal Justice
Commonweal

Opposition

California District Attorneys Association

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744

Date of Hearing: April 5, 2016
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1951 (Salas) – As Amended March 30, 2016

SUMMARY: Makes animal cruelty, injuring a police animal, or injuring or causing the death of a guide dog, signal, or service dog punishable by imprisonment in the state prison for 2, 3, or 4 years, and makes felony dog fighting punishable by 16 months, 2, or 3 years in the state prison. Specifically, **this bill**:

1) Provides that every person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal is guilty of a criminal offense and is punishable by imprisonment in the state prison for 2, 3, or 4 years.

2) States that when a person overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor is guilty of a criminal offense punishable by imprisonment in the state prison for 2, 3, or 4 years.

3) Specifies that a person who maliciously and intentionally maims, mutilates, or tortures any mammal, bird, reptile, amphibian, or fish, as a criminal offense punishable by imprisonment in the state prison for 2, 3, or 4 years.

4) Provides that any person that does any of the following is guilty of a felony and is punishable by imprisonment in the state prison 16 months, 2 or 3 years.

   a) Owns, possesses, keeps, or trains any dog, with the intent that the dog shall be engaged in an exhibition of fighting with another dog;

   b) For amusement or gain, causes any dog to fight with another dog, or causes any dogs to injure each other; and,

   c) Permits any of the above acts to be done on any premises under his or her control, or aid or abets that act.

5) Provides that any person who maliciously strikes, beats, kicks, stabs, shoots, or throws, hurls, or projects any rock or object at any horse being used by a peace officer, or any dog being supervised by a peace officer in the performance of his or her duties is a public offense. If the injury inflicted is a serious injury, as specified, the person shall be punished by imprisonment in the state prison for 2, 3, or 4 years, or by a fine not exceeding $20,000, or by both a fine and imprisonment.

6) Makes any person that intentionally causes injury to or the death of any guide, signal or service dog, as defined, while the dog is in the discharge of its duties, is guilty of a felony punishable by 2, 3, or 4 years in the state prison or by imprisonment in a county jail for 16 months 2, or 3 years, by a fine not to exceed $20,000, or by both a fine and imprisonment.

EXISTING LAW:

1) Provides that every person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal is guilty of a criminal offense and as a felony is punishable by imprisonment in a county jail for 16 months, 2, or 3 years, or by a fine up to $20,000, or by both that fine and imprisonment, or alternatively, as a misdemeanor by imprisonment in a county jail, or by a fine up to $20,000, or by both that fine and imprisonment. (Pen. Code, § 597, subd, (a).)

2) States that when a person overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor is guilty of a criminal offense and as a felony is punishable by imprisonment in a county jail for 16 months, 2, or 3 years, or by a fine up to $20,000, or by both that fine and imprisonment, or alternatively, as a misdemeanor by imprisonment in a county jail, or by a fine up to $20,000, or by both that fine and imprisonment. (Pen. Code, § 597, subd. (b).)

3) Specifies that a person who maliciously and intentionally maims, mutilates, or tortures any mammal, bird, reptile, amphibian, or fish, is a criminal offense and as a felony is punishable by imprisonment in a county jail for 16 months, 2, or 3 years, or by a fine up to $20,000, or by both that fine and imprisonment, or alternatively, as a misdemeanor by imprisonment in a county jail, or by a fine up to $20,000, or by both that fine and imprisonment. (Pen. Code, § 597, subd. (c).)

4) Provides that any person that does any of the following is guilty of a felony and is punishable by imprisonment in a county jail for 16 months, 2 or 3 years, or by a fine not to exceed $50,000, or by both imprisonment and a fine:

   a) Owns, possesses, keeps, or trains any dog, with the intent that the dog shall be engaged in an exhibition of fighting with another dog;

b) For amusement or gain, causes any dog to fight with another dog, or causes any dogs to injure each other; and,

c) Permits any of the above acts to be done on any premises under his or her control, or aid or abets that act. (Pen. Code, § 597.5, subd. (a).)

5) States that any person that intentionally causes injury to or the death of any guide, signal or service dog, as defined, while the dog is in the discharge of its duties, is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed one year, by a fine not exceeding 10,000, or by both a fine and imprisonment. (Pen. Code § 600.2.)

6) Provides that any person who maliciously strikes, beats, kicks, stabs, shoots, or throws, hurls, or projects any rock or object at any horse being used by a peace officer, or any dog being supervised by a peace officer in the performance of his or her duties is a public offense. If the injury inflicted is a serious injury, as specified, the person shall be punished as a felony by imprisonment in a county jail for 16 months, two or three years, and as a misdemeanor by imprisonment in a county jail for a term not exceeding one year, or by a fine not exceeding two thousand dollars, or by both a fine and imprisonment. If the injury inflicted is not a serious injury, the person shall be punished by imprisonment in the county jail for not exceeding one year, or by a fine not exceeding one thousand dollars, or by both a fine and imprisonment. (Pen. Code, § 600, subd. (a).)

7) Requires that if a defendant is granted probation for a conviction of animal cruelty, the court shall order the defendant to pay for, and successfully complete, counseling, as determined by the court, designed to evaluate and treat behavior or conduct disorders. If the court finds that the defendant is financially unable to pay for that counseling, the court may develop a sliding fee schedule based upon the defendant's ability to pay. The counseling shall be in addition to any other terms and conditions of probation, including any term of imprisonment and any fine. If the court does not order custody as a condition of probation for a conviction under this section, the court shall specify on the court record the reason or reasons for not ordering custody. This does not apply to cases involving police dogs or horses as described in Section 600. (Pen. Code, § 597, subd. (h).)

8) Provides that any person who causes any animal, not including a dog, to fight with another animal, or permits the same to be done on any property under his or her control, or aids or abets the fighting of any animal is guilty of a misdemeanor, punishable by up to one year in the county jail or by a fine not to exceed $10,000, or both imprisonment and a fine. (Pen. Code § 597b, subd. (a).)

9) Provides that any person who causes a cock to fight with another cock, or permits the same to be done on any property under his or her control, and any person who aid or abets the fighting of any cock or is present as a spectator is guilty of a misdemeanor, punishable by imprisonment in the county jail not to exceed one year, or by a fine not to exceed $10,000, or by both imprisonment and a fine. (Pen. Code, § 597b, subd. (b).)

10) Provides that any person who owns, possesses, keeps or trains any bird or other animal with the intent that that it be used an exhibition of fighting is guilty of a misdemeanor, punishable by imprisonment in the county jail not to exceed one year; by a fine not to exceed $10,000, or

by both imprisonment and a fine. (Penal Code Section 597j.)

11) States that it is misdemeanor for any person to tie or attach or fasten any live animal to any machine or device propelled by any power for the purpose of causing such animal to be pursued by a dog or dogs and the offense is punishable by up to one year in a county jail, by a fine not to exceed $2,500, or by both imprisonment and a fine. (Pen. Code, § 597h.)

12) Directs that any person who owns, possesses, or trains any bird or animal with the intent that the cock or other bird shall be engaged in an exhibition of fighting by his or her vendee or any other person is guilty of a misdemeanor, punishable by imprisonment in the county jail not exceed one year, by a fine not to exceed $10,000; or by both imprisonment and a fine. (Pen. Code, § 597j.),

13) States that ever person who willfully abandons any animal is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed six months, by a fine not to exceed $1,000, or by both a fine and imprisonment (Penal Code Section 597s.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "There is a direct link between acts of animal cruelty and violence toward others, including child abuse, spousal abuse, elder abuse, and other violent behavior. The correlation between animal abuse and violent crimes is so strong that the FBI will start collecting data on animal cruelty crimes via its National Incident-Based Reporting System (NIBRS). In doing so, the bureau has classified animal cruelty as a "Group A" felony, on par with arson, assault, and homicide.

   "Despite actions taken by the FBI and the established link between animal abuse and other violence, acts of animal cruelty are not classified as violent crimes in California no matter how gruesome the abuse, the number of animals injured, or prior convictions. AB 1951 gives judges the discretion to treat the most serious cases of animal abuse as violent crimes."

2) **Penalties for Animal Cruelty**: Under existing law, animal cruelty is an alternate felony/ misdemeanor. It may be charged as either a misdemeanor or a felony. As a felony, animal cruelty is punishable by imprisonment in a county jail for 16 months, 2, or 3 years, or by a fine of not more than $20,000, or by both that fine and imprisonment. As a misdemeanor, animal cruelty is punishable by imprisonment in a county jail for not more than one year, or by a $20,000 fine, or by both that fine and imprisonment.

   This bill would, additionally, make animal cruelty punishable by 2, 3, or 4 years in the state prison. There hasn't been any evidence presented that animal cruelty is not being appropriately punished under existing law, or why a maximum of three years imprisonment in a county jail is inadequate punishment? It is argued that the penalty increase contemplated in this bill would be an option in the most serious cases of animal abuse, but there is nothing preventing a court from imposing the increased penalties in all animal abuse cases.

3) **Penalties for Dog Fighting**: Under existing law, dog fighting is punishable only as felony with a term of imprisonment in a county of 16 months, 2, or 3 years, or by a fine not to exceed $50,000, or by both that fine and imprisonment.

   This bill would instead, make dog fighting punishable by 16 months, 2, or 3 years in the state prison, Again, there hasn't been any evidence presented as to why the existing penalty of up to three years in a county jail is inadequate? By providing that many of the penalty increases, contained in this bill, be served in the state prison, this bill shifts the cost of incarceration for these offenses back to the state which is inconsistent with the intent of the 2011 Realignment Act. The 2011 Realignment Act made non-serious and non-violent felony offenses punishable by imprisonment in a county jail rather than state prison with specific exceptions, and animal cruelty and dogfighting, although considered, were not made exceptions to realignment.

4) **Penalties for Injury to a Guide or Service Dog**: Under existing law, intentionally causing injury or death to a guide, signal or service dog is punishable as a misdemeanor punishable by imprisonment in a county jail for up to one year, or by a fine not to exceed $10,000, or by both that fine or imprisonment.

   This bill would, additionally, make this offense punishable by 16 months, 2, or 3 years in a county jail, by 2, 3, or 4 years in the state prison, and by an increased fine not to exceed $20,000. This is a substantial penalty increase without any evidence or showing as to why the existing penalty is inadequate, or that guide or service dogs are intentionally injured or killed on a frequent basis. Again, although a court would have sentencing options, there is nothing preventing a court from imposing a state prison sentence in most or every case and shifting the cost of incarceration to the state. One of the significant contributors to the state's prison overcrowding crisis, detailed below, is certain counties over reliance on state incarceration and, not incarcerating on a local level to avoid the attendant cost to the county. Not surprisingly, it is those counties that have complained the most about the 2011 Realignment Act.

5) **Penalties for Injury to a Police Animal**: Under existing law, seriously injuring a police dog or horse is an alternate felony/ misdemeanor. It may be charged as either a misdemeanor or a felony. As a felony, seriously injuring a police animal is punishable by imprisonment in a county jail for 16 months, 2, or 3 years, or by a fine of not more than $2,000, or by both that fine and imprisonment. As a misdemeanor, seriously injuring a police animal is punishable by imprisonment in a county jail for not more than one year, or by a $2,000 fine, or by both that fine and imprisonment.

   This bill would, additionally, make seriously injuring a police animal punishable by 2, 3, or 4 years in the state prison. Again, does this crime occur frequently? Are persons convicted not adequately punished with an existing maximum sentence of up to three years in a county jail? Does this offense really need to be punishable by imprisonment in the state prison? Prior to realignment was the state successfully rehabilitating individuals committed to the state prison?

Prison Overcrowding: On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of last year the administration reported that as "of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity." (Defendants' February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, Coleman v. Brown, Plata v. Brown (2-10-14).

However, even though the state has complied with the federal court order, the prison population needs to be maintained, not increased. And according to the Legislative Analyst's Office (LAO), "CDCR is currently projecting that the prison population will increase by several thousand inmates in the next few years and will reach the cap by June 2018 and exceed it by 1,000 inmates by June 2019." (http://www.lao.ca.gov/reports/2014/budget/criminal-justice/criminal-justice-021914.aspx.) The LAO also notes that predicting the prison population is "inherently difficulty" and subject to "considerable uncertainty." (*Ibid.*) Nevertheless, making animal cruelty punishable by imprisonment in the state prison when the prison population is already expected to increase seems imprudent at best.

6) **Argument in Support**: According to the *Kern County Network for Children*, "Currently a person convicted of a felony animal cruelty under California law is sentenced to our local jail. Prior to "realignment," a sentencing judge had the option to send the person to prison. With realignment, that option is no longer available to the judge. Animal welfare advocates in Bakersfield formed a committee the Justice for Animal Victims of Abuse has worked hard to reinstated judicial discretion in these cases of animal abuse. Our Kern County Assemblyman Rudy Salas has introduced AB 1951 to achieve this goal. The bill amends those sections of the Penal Code that specify the sentencing options for felony abuse of any animal, a law enforcement dog or horse, and a guide, signal or service dog.

"Over my twenty-eight year career in working in child welfare, I have seen firsthand the horrific link between animal abuse and the abuse our children. Such abuses are clearly violent, serious crimes and we must give the courts the tools they need to hold people truly accountable. AB 1951 recognizes that felony animal abuse is violent and is serious and has far more to do with the mindset of the perpetrator than the species of the victim."

7) **Argument in Opposition:** According to the, *California Attorneys for Criminal Justice*, "Current law provides a punishment for animal cruelty to be charged as a misdemeanor or felony under 1170(h). In addition to a felony charge and imprisonment in county jail for up to three years, a violation of these crimes can lead to a fine of $20,000 to $50,000. This bill will dramatically increase the punishment for these crimes when there is no evidence that current law is insufficient.

"CACJ opposes the increase punishment for these crimes as we have seen the over-criminalization has failed to work over the past 30-40 years. As mentioned in the bill's background, several studies have shown a direct link between acts of animal cruelty and violent crimes. However, there are several studies that show that over-criminalization and incarceration is not the proper tool to curtail these acts. Instead of sending a person to prison, our state should look at the mental health issues of these perpetrators and seek to rehabilitate rather than incarcerate.

"Furthermore, Governor Brown vetoed several bills last year that unnecessarily increased punishments when current law was sufficient. We believe current law adequately punishes these persons. Furthermore, California cannot keep this "tough on crime" approach that has been proven unsuccessful without considering evidence-based, mental health alternatives to over incarnation."

8) **Prior Legislation**:

a) AB 794 (Linder), Chapter 201, Statutes of 2015, expanded criminal acts against law enforcement animals to include animals used by volunteers acting under the direct supervision of a peace officer.

b) AB 2281 (Nava) of the 2008 Legislative Session made it a felony punishable by 16 months, 2 or 3 years in the state prison for any person convicted of being knowingly present as a spectator at any place, building, or tenement where preparations are being made for an exhibition of the fighting of dogs with the intent to be present at that exhibition. AB 2281 was held on the Appropriations Committee suspense file.

REGISTERED SUPPORT / OPPOSITION:

Support

Kern County Network for Children
Kern County Commission on Aging
KC ALIVE
Independent Living Center of Kern County
Women's Center-High Desert Inc.
The Cat House on the Kings
Alpha Canine Sanctuary

Three Private Citizens

Opposition

American Civil Liberties Union
California Attorneys for Criminal Justice
California Public Defenders Association

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

Date of Hearing: April 5, 2016
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1962 (Dodd) – As Amended March 30, 2016

SUMMARY: Requires establishing guidelines regarding minimum education and training standards for psychiatrists and psychologists to be considered for appointment by the court to conduct evaluations of defendants' mental competence. Specifically, **this bill**:

1) Requires the Department of State Hospitals to adopt guidelines establishing minimum education and training standards for a psychiatrist of licensed psychologist to be considered for appointment by the court to conduct examinations of defendants regarding mental incompetence.

2) Requires the Department of State Hospitals to consult with the Judicial Council of California and groups or individuals representing judges, defense counsel, district attorneys, counties, advocates for people with developmental and mental disabilities, state psychologists and psychiatrists, professional associations and accredit bodies for psychologists and psychiatrists, and other interested stakeholders in the development of guidelines.

EXISTING LAW:

1) Provides person cannot be tried to punishment or have his or her probation, mandatory supervision, postrelease community supervision, or parole revoked while that person is mentally incompetent. (Pen. Code, § 1367, subd. (a).)

2) States that a defendant is mentally incompetent for purposes of this chapter if, as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner. (Pen. Code, § 1367, subd. (a).)

3) Specifies that if a doubt arises in the mind of the judge as to the mental competence of the defendant, he or she shall state that doubt in the record and inquire of the attorney for the defendant whether, in the opinion of the attorney, the defendant is mentally competent. (Pen. Code, § 1368, subd. (a).)

4) Provides that if counsel informs the court that he or she believes the defendant is or may be mentally incompetent, the court shall order that the question of the defendant's mental competence is to be determined in a hearing. (Pen. Code, § 1368, subd. (b).)

5) Requires a trial by court or jury of the question of mental competence to proceed in the following order:

a) The court shall appoint a psychiatrist or licensed psychologist, and any other expert the court may deem appropriate, to examine the defendant; (Pen. Code § 1369, subd. (a).)

b) In any case where the defendant or the defendant's counsel informs the court that the defendant is not seeking a finding of mental incompetence, the court shall appoint two psychiatrists, licensed psychologists, or a combination thereof; (Pen. Code § 1369, subd. (a).)

c) One of the psychiatrists or licensed psychologists may be named by the defense and one may be named by the prosecution; (Pen. Code § 1369, subd. (a).)

d) The examining psychiatrists or licensed psychologists shall evaluate the nature of the defendant's mental disorder, if any, the defendant's ability or inability to understand the nature of the criminal proceedings or assist counsel in the conduct of a defense in a rational manner as a result of a mental disorder and, if within the scope of their licenses and appropriate to their opinions, whether or not treatment with antipsychotic medication is medically appropriate for the defendant and whether antipsychotic medication is likely to restore the defendant to mental competence; (Pen. Code § 1369, subd. (a).)

e) If an examining psychologist is of the opinion that antipsychotic medication may be medically appropriate for the defendant and that the defendant should be evaluated by a psychiatrist to determine if antipsychotic medication is medically appropriate, the psychologist shall inform the court of this opinion and his or her recommendation as to whether a psychiatrist should examine the defendant; (Pen. Code § 1369, subd. (a).)

f) The examining psychiatrists or licensed psychologists shall also address the issues of whether the defendant has capacity to make decisions regarding antipsychotic medication and whether the defendant is a danger to self or others; (Pen. Code § 1369, subd. (a).)

g) If the defendant is examined by a psychiatrist and the psychiatrist forms an opinion as to whether or not treatment with antipsychotic medication is medically appropriate, the psychiatrist shall inform the court of his or her opinions as to the likely or potential side effects of the medication, the expected efficacy of the medication, possible alternative treatments, and whether it is medically appropriate to administer antipsychotic medication in the county jail; (Pen. Code § 1369, subd. (a).)

h) If it is suspected the defendant is developmentally disabled, the court shall appoint the director of the regional center for the developmentally, or the designee of the director, to examine the defendant. The court may order the developmentally disabled defendant to be confined for examination in a residential facility or state hospital; (Pen. Code § 1369, subd. (a).)

i) The regional center director shall recommend to the court a suitable residential facility or state hospital. Prior to issuing an order pursuant to this section, the court shall consider the recommendation of the regional center director. While the person is confined pursuant to order of the court under this section, he or she shall be provided with necessary care and treatment; (Pen. Code § 1369, subd. (a).)

j) The counsel for the defendant shall offer evidence in support of the allegation of mental incompetence; (Pen. Code § 1369, subd. (b)(1).)

k) If the defense declines to offer any evidence in support of the allegation of mental incompetence, the prosecution may do so; (Pen. Code § 1369, subd. (b)(2).)

l) The prosecution shall present its case regarding the issue of the defendant's present mental competence; (Pen. Code § 1369, subd. (c).)

m) Each party may offer rebutting testimony, unless the court, for good reason in furtherance of justice, also permits other evidence in support of the original contention; (Pen. Code § 1369, subd. (d).)

n) When the evidence is concluded, unless the case is submitted without final argument, the prosecution shall make its final argument and the defense shall conclude with its final argument to the court or jury; (Pen. Code § 1369, subd. (e).)

o) In a jury trial, the court shall charge the jury, instructing them on all matters of law necessary for the rendering of a verdict. It shall be presumed that the defendant is mentally competent unless it is proved by a preponderance of the evidence that the defendant is mentally incompetent. The verdict of the jury shall be unanimous; and (Pen. Code § 1369, subd. (f).)

a) Only a court trial is required to determine competency in any proceeding for a violation of probation, mandatory supervision, postrelease community supervision, or parole. (Pen. Code § 1369, subd. (g).)

6) Specifies that a person cannot be tried, or have his or her probation, mandatory supervision, postrelease community supervision, or parole revoked while that person is mentally incompetent.

7) States that a defendant is mentally incompetent if, as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner. (Pen. Code, § 1367, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "It is crucial that we ensure that the psychiatrists and psychologists who determine mental competency of criminal defendants have the experience to be able to provide an accurate determination. Without adequate training, experience, and standards, these evaluators may incorrectly determine a malingerer is incompetent to stand trial and place them in our state hospital system. The Department of State Hospitals estimates that between 15-20 percent of the patients referred to them as incompetent to stand trial are patients who are faking mental illness to avoid being sentenced to prison (malingerers). This represents a significant unneeded cost to the state, and also a safety risk to employees and patients, as malingerers can prey on patients and staff once they

arrive. Assaults occur on state hospital staff or other patients on a daily basis, sometimes resulting in serious injury, and ensuring evaluators are adequately trained will reduce erroneous commitments. Additionally, ensuring evaluators have the proper experience will ensure those who truly need treatment in our state hospitals are placed there to get the help they need and are not unnecessarily victimized."

2) **Mental Incompetence:** A defendant is mentally incompetent "if, as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner. (Pen. Code, § 1367.)

   Evidence of incompetence may come from several sources, including the defendant's demeanor, irrational behavior, and prior mental examinations; however, to be entitled to a competency hearing, a defendant must exhibit more than "a preexisting psychiatric condition that has little bearing on the question . . . whether the defendant can assist his defense counsel." (*People v. Rogers* (2006) 39 Cal.4th 826, 847.)

   When substantial evidence of incompetence exists, the trial court cannot proceed with the case against the defendant without first holding a competency hearing.

   Once the court declares a doubt about a defendant's competence to stand trial, or whenever there is substantial evidence of incompetence, the trial court must appoint a psychiatrist or licensed psychologist to examine the defendant. If defense counsel opposes a finding of incompetence, the court must appoint two experts: one chosen by the defense, one by the prosecution. An examining psychiatrist or psychologist must evaluate the defendant's alleged mental disorder and the defendant's ability to understand the proceedings and assist counsel, as well as address whether anitpsychotic medication is medically appropriate. (Pen. Code, § 1369, subd. (a).)

   The court may appoint other kinds of experts, as appropriate, to assist with a determination of competency. For instance, some courts appoint attorneys with expertise in the area of incompetency to testify as experts after examining the defendant, especially when the defendant's ability to cooperate with counsel is at issue or when there are especially complex legal issues that the defendant needs to understand.

3) **Incompetence to Stand Trial is Determined in the Course of an Adversarial Process with Checks and Balances beyond the Evaluators:**

   The existing process to determine Incompetent to Stand Trial (IST) involves mental health evaluations by experts who are psychiatrists or psychologists. But in addition to the evaluations by the experts, the process includes a judge, a district attorney, and a defense attorney. To the extent the parties have concerns or disagreements about the validity of the determinations reached by the evaluators, the parties can demand a trial to determine if the defendant meets the legal standard for Not Guilty be Insanity (NGI) or IST. The trial allows additional evidence to be presented, and existing evidence to be challenged, by the parties in order reach an accurate determination of NGI or IST, if there is not a consensus among the parties.

   The fact that the psychiatrists, psychologists, or other experts appointed by the court are

providing opinions within an adversarial setting ensures that the opinions are being screened by the defense, the prosecution and the court. To the extent that those parties relying on the opinions of the experts, don't have confidence in the quality of the evaluations, they can take appropriate action prevent the appointment of such experts in the future.

4) **Current Standards for Training and Education of Experts Used to Evaluate Mental Incompetence:** Current law allows courts to appoint a "psychiatrist, licensed psychologist, or other expert the court may deem appropriate" to examine a defendant regarding his mental competence. (Pen. Code, § 1369, subd. (a).)

   Current law does not provide further guidance concerning the education and training required before a psychiatrist or licensed psychologist can be appointed to conduct an evaluation of a defendant's mental competence. However, there are education and training requirements required to become a psychiatrist or a licensed psychologist. Any psychiatrist appointed by the court has graduated medical school, passed the medical boards, and completed the requisite training to be a psychiatrist. Likewise, a licensed psychologist has met the appropriate education and training requirements to become a licensed psychologist.

   This bill provides a process to establish educational and training requirements that might be particular to conducting mental competence evaluations that might not otherwise be addressed in the training and education for psychiatrists or psychologists.

5) **Argument in Support**: According to *AFSCME, Local 2620*, "AB 1962 which requires psychiatrists and licensed psychologists to have forensic experience when examining the mental competence of a defendant. The evaluation of a defendant to determine whether they are fit to stand trial, is inherently forensic in nature. Naturally, having an expert with forensic experience is necessary in order to make an accurate evaluation. Thus, in mandating forensic experience, psychiatrists and psychologists will be able discern the difference between a defendant who is truly incompetent to stand trial, and a defendant abusing the California correctional system to receive a less restrictive punishment (malingerers), and in turn placing putting more lives in danger. These patients do not pose a threat to public safety and cease to benefit from treatment with the State Hospitals."

6) **Related Legislation**:

   a) AB 1237 (Brown), would have required the Department of State Hospitals to establish, within the department, a pool of psychiatrists and psychologists with forensic skills, and would require the department to create evaluation panels from the pool of psychiatrists and psychologists. This bill would also have required the court to order an examination by an evaluation panel for a defendant who pleads not guilty by reason of insanity or who may be mentally incompetent. Never heard in Assembly Public Safety.

7) **Prior Legislation**:

   a) AB 2543 (Levine), Legislative Session of 2013-2014, would have required the State Department of State Hospitals to establish a pool of psychiatrists and psychologists with forensic skills who would evaluate a defendant who pleads not guilty by reason of insanity or who may be mentally incompetent. Held in Assembly Public Safety.

REGISTERED SUPPORT / OPPOSITION:

Support

Union of American Physicians and Dentists (Sponsor)
American Federation of State, County and Municipal Employees, Local 2620
California Association of Psychiatric Technicians
California Attorneys for Criminal Justice
Peace Officers Research Association of California

Opposition

None

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

Date of Hearing: April 5, 2016
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1993 (Irwin) – As Amended March 30, 2016
As Proposed to be Amended in Committee

SUMMARY: Mandates that specified technology companies specify law enforcement contacts to coordinate with law enforcement agency investigations. Specifically, **this bill**:

1) Specifies that specified technology companies shall file, within 90 days after the filing of its original articles and annually thereafter during the applicable filing period, a statement identifying the corporate "law enforcement contact."

   a) Specifies notification requirements that the Secretary of State must follow to inform corporations of their duty to comply with these procedures; and

   b) Provides that annually the Secretary of State shall transmit to the Attorney General, in the manner prescribed by the Attorney General, a copy of the current statement made pursuant to this section for each corporation.

2) Requires by July 1, 2017, specified technology corporations shall, at minimum, provide the following through a specified law enforcement contact:

   a) An exclusive process for emergency disclosure requests;

   b) Exclusive access and service for law enforcement personnel;

   c) An ability to comply with a law enforcement request for information regardless of the location of the data;

   d) Continual availability of the law enforcement contact; and

   e) The authority to make decisions regarding warrants and the disclosure of information and data.

3) Requires a corporation subject to these provisions to respond to a properly served warrant within five business days.

EXISTING FEDERAL LAW: Provides that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized. (U.S. Const., 4th Amend.; Cal. Const., art. I, § 13.)

EXISTING STATE LAW:

1) Establishes rules and regulations for corporations to appoint agents for service of process. Additionally, specifies rules for when agents for service of process resign and the designation of a new agent for service of process. (Corporations Code §§ 1502, 1503 & 1504.)

2) Prohibits exclusion of relevant evidence in a criminal proceeding on the ground that the evidence was obtained unlawfully, unless the relevant evidence must be excluded because it was obtained in violation of the federal Constitution's Fourth Amendment. (Cal. Const., art. I, § 28(f)(2) (Right to Truth-in-Evidence provision).)

3) Defines a "search warrant" as a written order in the name of the people, signed by a magistrate and directed to a peace officer, commanding him or her to search for a person or persons, a thing or things, or personal property, and in the case of a thing or things or personal property, bring the same before the magistrate. (Pen. Code, § 1523.)

4) Provides the specific grounds upon which a search warrant may be issued, including when the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony. (Pen. Code, § 1524.)

5) Provides that a search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing, or things and the place to be searched. (Pen. Code, § 1525.)

6) Requires a magistrate to issue a search warrant if he or she is satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence. (Pen. Code, § 1528, subd. (a).)

7) Requires a provider of electronic communication service or remote computing service to disclose to a governmental prosecuting or investigating agency the name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, and length of service of a subscriber to or customer of that service, and the types of services the subscriber or customer utilized, when the governmental entity is granted a search warrant. (Pen. Code, § 1524.3, subd. (a).)

8) States that a governmental entity receiving subscriber records or information is not required to provide notice to a subscriber or customer of the warrant. (Pen. Code, § 1524.3, subd. (b).)

9) Authorizes a court issuing a search warrant, on a motion made promptly by the service provider, to quash or modify the warrant if the information or records requested are unusually voluminous in nature or compliance with the warrant otherwise would cause an undue burden on the provider. (Pen. Code, § 1524.3(c).)

10) Requires a provider of wire or electronic communication services or a remote computing service, upon the request of a peace officer, to take all necessary steps to preserve records and other evidence in its possession pending the issuance of a search warrant or a request in writing and an affidavit declaring an intent to file a warrant to the provider. Records shall be retained for a period of 90 days, which shall be extended for an additional 90 day period

upon a renewed request by the peace officer. (Pen. Code, § 1524.3, subd. (d).)

11) Specifies that no cause of action shall be brought against any provider, its officers, employees, or agents for providing information, facilities, or assistance in good faith compliance with a search warrant. (Pen. Code, § 1524.3, subd. (e).)

12) Provides for a process for a search warrant for records that are in the actual or constructive possession of a foreign corporation that provides electronic communication services or remote computing services to the general public, where the records would reveal the identity of the customers using those services, data stored by, or on behalf of, the customer, the customer's usage of those services, the recipient or destination of communications sent or from those customers, or the content of those communications. (Pen. Code, § 1524.2.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Today most large tech companies, including telecommunications, internet search, and social media providers, receive hundreds of thousands of law enforcement requests for data each year nationally. These results can be broken down into these categories: subpoenas, orders, warrants, and emergency requests.

   "These requests are intended to produce evidence or aid in investigations related to violent crimes, credible threats, organized crime, terrorist activities, search and rescue situations—or when law enforcement is trying to find a missing person, among others.

   "Technology companies have begun publishing annual transparency reports about government data requests and the company's policies for providing notice when the government requests and accesses their data, and their process for screening warrants, orders, and emergency requests before handing over user content. The reports also provide statistics detailing how many total requests were received, how many resulted in data disclosure, and how many were rejected. While there appears to be some consensus regarding industry best practices balancing privacy and civil liberties with stewardship of public safety, the lack of standardization and guidelines for such requests is apparent.

   "For example, both AT&T and Verizon reported receiving nearly 300,000 law enforcement requests each in 2015. According to Verizon's transparency report, 'We carefully review each demand we receive and, where appropriate, we require law enforcement agencies to narrow the scope of their demands or correct errors in those demands before we produce some or all of the information sought.' Each request goes through a screening process that can take varying amounts of time depending on the company's internal policies. Industry averages show that roughly 75% of requests result in some data being produced. Given the increasing volume of these requests, and varying company guidelines and internal policies, a level of standardization and expectation needs to be assured.

   "AB 1993 addresses this issue by requiring companies that generate large amounts of consumer data to standardize their process for receiving and responding to law enforcement requests for data to meet industry best practices. AB 1993 will ensure a process for

submitting emergency disclosure requests that is continually available, exclusive to law enforcement personnel for emergency purposes, that data can be produced regardless of where it is physically stored, and that the service provider staff has first-hand decision-making authority for disclosure of data. AB 1993 will ensure that in emergency situations the interface between law enforcement and companies with data relevant to the situation meets minimum standards of effectiveness."

2) **Background:** According to the background submitted by the author, "Existing law authorizes a court to issue a warrant for seizure of property, inclusive of electronic information, where probable cause exists. Existing law also provides that a government entity that obtains electronic information pursuant to an emergency shall, within three days after obtaining the information, file for a warrant or order authorizing obtaining the electronic information or a motion seeking approval of the emergency disclosures that shall set forth the facts giving rise to the emergency. Existing law also establishes procedures for certain California corporations when served with a warrant issued by a court in another state.

   "With the passage of SB 178 (Leno), also known as CalECPA, privacy rights were extended to electronic data in a way that federal law does not: it bars any state law enforcement or investigative entity from compelling a business to turn over any data or digital communication—including emails, texts, documents stored in the cloud—without a warrant. It also requires a warrant to search or track the location of a business' electronic devices like mobile phones. Also, no business (or its officers, employees and agents) may be subject to any cause of action for providing information or assistance pursuant to a warrant or court order. CalECPA also permits a service provider to voluntarily disclose electronic communication information when disclosure is not otherwise prohibited by law, such as in emergency situations."

3) **Amendments to be Taken in Committee:** The amendments that are being taken today in committee will clarify that companies may have more than one law enforcement contact, and that existing law provisions related to responding to warrants will control procedure. Opponents to the bill have concerns that the bill would have specified one sole individual as a "law enforcement contact" and as a result that person would have to be made available 24 hours a day, every day of the year. Many of these corporations have entire teams of employees that work with law enforcement from around the world. By specifying that there can be multiple contacts, the amendments will hopefully resolve that concern. Additionally, the amendments allow existing case law and statutory framework for responding to warrants issued by law enforcement to control. A mountain of existing law exists in this area and it is best to let existing statutory law and case law stare decisis specify the rules corporations should follow in this area.

4) **Foreign Corporations Don't File Articles of Incorporation in California:** Foreign corporations, or organizations which are headquartered outside of the State of California, do not file articles of incorporation in California. Many of these corporations do business in California. This bill only specifies that those corporations who file articles of corporation in California should specify law enforcement contacts. Therefore, this bill would seem to only apply to California corporations and not corporations who are headquartered out of the state as foreign corporations.

5) **Argument in Support**: According to the *California State Sheriffs' Association*, "We are pleased to support Assembly Bill 1993, which would require large technology corporations to designate a corporate law enforcement contact.

"Over the years, law enforcement has witnessed the increased use of technology to promote criminal activity. As a result, law enforcement has an interest in securing access to the resulting data.

"Unfortunately, many law enforcement requests for data go unnoticed because the receiving entities do not have designated contacts. This can have adverse consequences for law enforcement and the justice system as a whole because it creates a missed opportunity to review potentially incriminating evidence. Consequently, these internal failures can provide the suspected criminal with an advantageous limitation on evidence.

"AB 1993 solves the issue of overlooked requests by requiring technology companies to provide a designated contact person. This bill ensures that law enforcement will have a defined person receive and review their request. This will reduce the likelihood that a request for information via a search warrant goes unnoticed."

6) **Argument in Opposition**: According to the *California Cable & Telecommunications Association (CCTA)*, "AB 1993 would create an overly burdensome process for businesses to communicate with and respond to requests from law enforcement agencies. CCTA member companies' existing processes for working with law enforcement agencies in criminal cases or urgent situations are effective and efficient, and, at the same time, balance law enforcement needs and customer privacy. This bill would create a bureaucratic process ill-designed for multistate businesses with tens of millions of customers.

"AB 1993 would require the California Attorney General to establish minimum qualifications for a corporate law enforcement contact, by July 1, 2017, for any corporation that generates customer data for 1,000,000 or more persons annually from either (1) data searches, (2) geolocation data, or (3) social media. The minimum qualifications would require that 'the contact have continual availability and authority to make decisions regarding warrants and the disclosure of information and data.' Any information, whether it is located in or out of California, requested by law enforcement would have to be provided within five business days.

"CCTA member companies are multistate businesses that operate 24 hours a day, utilizing shared services throughout the country, with tens of millions of customers. While our member companies do have law enforcement contacts, there is not just one 'contact' who can be continually available and has the authority to make decisions regarding warrants and the disclosure of information. Instead, the companies employ specialized units specially trained to work with law enforcement agencies across the nation. AB 1993 would empower the California Attorney General to dictate how CCTA member companies operate and work with law enforcement in California, creating a state specific mandate that can only complicate and impair work with local law enforcement agencies."

7) **Prior Legislation**:

a) SB 178 (Leno), Chapter 651, Statutes of 2015, prohibited a government entity from compelling the production of, or access to, electronic-communication information or

electronic-device information without a search warrant or wiretap order, except under specified emergency situations.

b) SB 467 (Leno) of the 2013-2014 Legislative Session, would have required a search warrant when a governmental agency seeks to obtain the contents of a wire or electronic communication that is stored, held or maintained by a provider of electronic communication services or remote computing services. SB 467 was vetoed.

c) SB 1434 (Leno), of the 2011-12 Legislative Session, would have required a government entity to get a search warrant in order to obtain the location information of an electronic device. SB 1434 was vetoed.

d) SB 914 (Leno), of the 2011-2012 Legislative Session, would have restricted the authority of law enforcement to search portable electronic devices without obtaining a search warrant. SB 914 was vetoed.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
California Police Chiefs Association
California State Sheriffs' Association

Opposition

California Cable & Telecommunications Association

Analysis Prepared by: Gabriel Caswell / PUB. S. / (916) 319-3744

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BILL NUMBER: AB 1993 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY MARCH 30, 2016
AMENDED IN ASSEMBLY MARCH 28, 2016

INTRODUCED BY Assembly Member Irwin

FEBRUARY 16, 2016

An act to add Section 1502.7 to the Corporations Code, and to add Section 1524.4 to the Penal Code, relating to law enforcement.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1502.7 is added to the Corporations Code, to read:

1502.7. (a) Every corporation described in subdivision (a) of Section 1524.4 of the Penal Code shall file, within 90 days after the filing of its original articles and annually thereafter during the applicable filing period, a statement identifying the corporate law enforcement contact **or contacts** designated pursuant to Section 1524.4 of the Penal Code.

(b) For the purposes of this section, the applicable filing period for a corporation shall be the calendar month during which its original articles were filed and the immediately preceding five calendar months. The Secretary of State shall provide a notice to each corporation to comply with this section approximately three months prior to the close of the applicable filing period. The notice shall state the due date for compliance and shall be sent to the
last address of the corporation according to the records of the Secretary of State or to the last electronic mail address according to the records of the Secretary of State if the corporation has elected to receive notices from the Secretary of State by electronic mail. The failure of the corporation to receive the notice is not an excuse for failure to comply with this section.

(c) The Secretary of State may destroy or otherwise dispose of any statement filed pursuant to this section after it has been superseded by the filing of a new statement.

(d) On or before October 1, 2017, and annually thereafter, the Secretary of State shall transmit to the Attorney General, in the manner prescribed by the Attorney General, a copy of the current statement made pursuant to this section for each corporation.

(e) If ~~the~~ **a** corporate law enforcement contact is no longer employed by the corporation, the corporation shall forthwith file a statement identifying ~~the~~ **any** new corporate law enforcement contact designated pursuant to Section 1524.4 of the Penal Code.

SEC. 2. Section 1524.4 is added to the Penal Code, to read:

1524.4. (a) This section applies to a corporation operating in California that is a service provider, as defined in subdivision (j) of Section 1546, that generates customer data for 1,000,000 or more people annually. This section does not apply to a service provider that does not offer services to the general public.

(b) ~~(1)~~ A corporation described in subdivision (a) shall designate a corporate law enforcement contact **or contacts** that is responsible for the requirements established pursuant to paragraph (1) of subdivision (c). Those requirements may be fulfilled by means of an Internet Web portal, telecommunications, or any combination of those communication methods. If

~~the~~ a corporate law enforcement contact is no longer employed by the corporation, the corporation shall forthwith designate ~~a~~ any new corporate law enforcement contact or contacts.

~~(2) When properly served with a search warrant issued by a California court, a corporation described in subdivision (a) shall provide to the peace officer to whom the search warrant was issued pursuant to subdivision (a) of Section 1528, all records sought pursuant to that warrant, including those records maintained or located outside this state.~~

(c) (1) By July 1, 2017, service providers shall, at a minimum, provide the following through their law enforcement contact or contacts:

(A) An exclusive process for emergency disclosure requests.

(B) Exclusive access and service for law enforcement personnel.

(C) An ability to comply with a law enforcement request for information regardless of the location of the data.

(D) Continual availability of the law enforcement contact or contacts.

(E) The authority to make decisions regarding warrants and the disclosure of information and data.

(2) The Attorney General shall, annually, distribute information describing how to access each of the corporate law enforcement contacts created from the statements that he or she receives from the Secretary of State pursuant to Section 1502.7 of the Corporations Code to local law enforcement agencies.

Date of Hearing: April 5, 2016
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2147 (Eggman) – As Introduced February 17, 2016

SUMMARY: Specifies that vehicle impoundment programs which are related to solicitation of prostitution offenses, currently authorized under existing state law, do not need to be authorized by a local ordinance. Specifically, **this bill**:

1) Provides that a vehicle used in the commission of a crime related to prostitution by a person buying or attempting to buy sexual services is a nuisance subject to an impoundment period of up to 30 days.

   a) Specifies that a motor vehicle is a public nuisance subject to seizure by a local law enforcement agency and an impoundment period of up to 30 days when the motor vehicle is used in the commission or attempted commission of a violation solicition by a person buying or attempting to buy sexual services if the owner or operator of the vehicle has had a prior conviction for the same offense within the past three years; and

   b) The vehicle may only be impounded pursuant to a valid arrest by a local law enforcement agency of the driver for a violation of solicitation for buying or attempting to buy sexual services.

2) Specifies that the impoundment procedures shall apply to offenders buying or purchasing sexual services.

3) Imposes the same procedures for impoundment, storage, and release of the vehicle as are provided under the ordinance-authorizing provisions under existing law, as they apply to solicitation of prostitution offenses, without the requirement that an ordinance be passed in order to authorize local authorities to make use of the impounding authority. The following procedures shall apply:

   a) Requires that within two working days after impoundment, the impounding agency shall send a notice by certified mail, return receipt requested, to the legal owner of the vehicle, at the address obtained from the department, informing the owner that the vehicle has been impounded;

   b) States the notice shall also include notice of the opportunity for a post-storage hearing to determine the validity of the storage or to determine mitigating circumstances establishing that the vehicle should be released. The impounding agency shall be prohibited from charging for more than five-days' storage if it fails to notify the legal owner within two working days after the impoundment when the legal owner redeems the impounded vehicle;

c) Provides that the impounding agency shall maintain a published telephone number that provides information 24 hours per day regarding the impoundment of vehicles and the rights of a legal owner and a registered owner to request a hearing;

d) Mandates the notice include all of the following information:

   i) The name, address, and telephone number of the agency providing the notice;

   ii) The location of the place of storage and description of the vehicle, that shall include, if available, the model or make, the manufacturer, the license plate number, and the mileage;

   iii) The authority and purpose for the removal of the vehicle; and,

   iv) A statement that in order to receive a post-storage hearing, the owners, or their agents, shall request the hearing in person, writing, or by telephone within 10 days of the date appearing on the notice.

e) States the post-storage hearing shall be conducted within 48 hours of the request, excluding weekends and holidays. The public agency may authorize one of its own officers or employees to conduct the hearing if that hearing officer is not the same person who directed the seizure of the vehicle. Failure of the legal and the registered owners, or their agents, to request or to attend a scheduled hearing shall satisfy the post-storage hearing requirement;

f) Requires the agency employing the person who directed the storage to be responsible for the costs incurred for towing and storage if it is determined in the post-storage hearing that reasonable grounds for the storage are not established. Any period during which a vehicle is subjected to storage under an ordinance adopted pursuant to this bill shall be included as part of the period of impoundment;

g) States the impounding agency shall release the vehicle to the registered owner or his or her agent prior to the end of the impoundment period under any of the following circumstances:

   i) The driver of the impounded vehicle was arrested without probable cause;

   ii) The vehicle is a stolen vehicle;

   iii) The vehicle is subject to bailment and was driven by an unlicensed employee of a business establishment, including a parking service or repair garage;

   iv) The driver of the vehicle is not the sole registered owner of the vehicle and the vehicle is being released to another registered owner of the vehicle who agrees not to allow the driver to use the vehicle until after the end of the impoundment period;

   v) The registered owner of the vehicle was neither the driver nor a passenger of the vehicle at the time of the alleged violation, or was unaware that the driver was using

the vehicle to engage in solicitation of prostitution,; and

vi) A spouse, registered domestic partner, or other affected third party objects to the impoundment of the vehicle on the grounds that it would create a hardship if the subject vehicle is the sole vehicle in a household. The hearing officer shall release the vehicle where the hardship to a spouse, registered domestic partner, or other affected third party created by the impoundment of the subject vehicle, or the length of the impoundment, outweigh the seriousness and the severity of the act in which the vehicle was used.

h) Provides that notwithstanding any provision of law, if a motor vehicle is released prior to the conclusion of the impoundment period because the driver was arrested without probable cause, neither the arrested person nor the registered owner of the motor vehicle is responsible for towing and storage charges nor shall the motor vehicle be sold to satisfy those charges;

i) Requires that the registered owner or his or her agent be responsible for all towing and storage charges related to the impoundment except as otherwise provided;

j) States no lien sale processing fees shall be charged to the legal owner who redeems the vehicle prior to the 15th day of impoundment. Neither the impounding authority nor any vehicle having possession of the vehicle shall collect from the legal owner fees associated with towing a storage, as specified, unless the legal owner voluntarily requests a post-storage hearing;

k) Provides a person operating or in charge of a storage facility where vehicles are stored, as specified, shall accept a valid bank credit card or cash for payment of towing, storage and related fees by a legal or registered owner or the owner's agent claiming the vehicle. A credit card or debit card shall be in the name of the person presenting the card. The term "credit card" does not include one issued by a retail seller and is defined in the Civil Code;

l) Requires that if a person operating or in charge of a storage facility, as specified, does not allow for the use of a credit card or cash, he or she shall be civilly liable to the owner of the vehicle or the person who tendered the fees for four times the amount of the towing, storage, and related fees not to exceed $500;

m) Mandates a person operating or in charge of the storage facility, as specified, must have sufficient funds on the premises during normal business hours to accommodate, and make change for a reasonable monetary transaction;

n) States credit charges for towing and storage services shall comply with relevant sections of the Civil Code. Law enforcement agencies may include the costs of providing for payment by credit when making agreements with towing companies on rates. ;

o) States a vehicle removed and seized under an ordinance adopted pursuant to this bill shall be released to the legal owner of the vehicle or the legal owner's agent prior to the end of the impoundment period if all of the following conditions are met:

i) The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state, or is another person who is not the registered owner and holds a security interest in the vehicle;

ii) The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure and impoundment of the vehicle;

iii) The legal owner, or his or her agent, presents to the law enforcement agency, impounding agency, person in possession of the vehicle or any person acting on behalf of those agencies, a copy of the assignment, as specified, a release from the one responsible governmental agency, a government-issued photographic identification card and any one of the following as determined by the legal owner or his or her agent: a certificate of repossession for the vehicle; a security agreement for the vehicle, and; title showing proof of ownership, as specified;

iv) The law enforcement agency, impounding agency, or any person acting on behalf of those agencies may require the agent of the legal owner to produce a photocopy or fax of its repossession agency license or registration issued pursuant to the Business and Professions Code. Any document may be originals, photocopies or faxes or may be transmitted electronically and need not be notarized;

v) Administrative costs, as specified, shall not be charged to the legal owner, as specified, unless he or she requests a post-storage hearing. No agency may require a post-storage hearing as a requirement for release of a vehicle. Copies of all documents must be provided to the legal owner except for the vehicle evidentiary log book. The legal owner shall indemnify and hold harmless a storage facility from any claims arising out of the release of the vehicle to the legal owner or his or her agent and from any damage to the vehicle after its release, including the reasonable costs associated with defending any such claims; and

vi) A failure by a storage facility to comply with any applicable conditions set forth in this bill shall not affect the right of the legal owner or his or her agent to retrieve the vehicle if all the conditions are met, as specified.

p) States a legal owner, or his or her agent, who meets the requirements for release of a vehicle, as specified, shall not be required to request a post-storage hearing as a requirement for release of the vehicle to the legal owner or the legal owner's agent;

q) Provides a legal owner, or his or her agent, who meets the requirements for release of a vehicle, as specified, shall not release the vehicle to the registered owner of the vehicle or an agent of the registered owner unless the registered owner is a rental car agency, until after the termination of the impoundment period;

r) States prior to relinquishing the vehicle, the legal owner may require the registered owner to pay all towing and storage charges related to the seizure and impoundment;

s) Provides a vehicle removed and seized pursuant to an ordinance adopted pursuant to this bill shall be released to a rental car agency prior to the end of the impoundment period if the agency is either the legal owner or registered owner of the vehicle and the agency

pays all towing and storage fees related to the seizure and impoundment of the vehicle; and

t) States the owner of a rental vehicle that was seized under an ordinance adopted pursuant to this bill may continue to rent the vehicle upon recovery of the vehicle. However, the rental car agency shall not rent another vehicle to the driver of the vehicle that was seized until the impoundment period has expired. The rental car agency may require the person to whom the vehicle was rented to pay all towing and storage charges related to the seizure and impoundment.

EXISTING LAW:

1) Permits local jurisdictions to adopt local ordinances permitting impoundment of vehicles for violations of prostitution, pimping, and pandering offenses in the same manner with the same procedural protections as provided in this bill. (Veh. Code § 22659.5.)

2) States notwithstanding any other provision of law and except as provided in this provision, a motor vehicle is subject to forfeiture as a nuisance if it is driven on a California highway by a driver with a suspended or revoked license, or by an unlicensed driver, who is a registered owner of the vehicle at the time of impoundment and has a previous misdemeanor conviction for driving on a suspended or revoked license. (Veh. Code § 14607.6, subd. (a).)

3) Prohibits a peace officer from impounding a vehicle, as specified, if the license of the driver expired within the preceding 30 days and the driver would otherwise have been properly licensed. (Veh. Code § 14607.6, subd. (c)(2).)

4) Provides that a peace officer may exercise discretion in a situation where the driver without a valid license is an employee driving a vehicle registered to the employer in the course of employment. A peace officer may also exercise discretion in a situation where the driver without a valid license is the employee of a bona fide business establishment or is a person otherwise controlled by such an establishment and it reasonably appears that an owner of the vehicle, or an agent of the owner, relinquished possession of the vehicle to the business establishment solely for servicing or parking of the vehicle or other reasonably similar situations, and where the vehicle was not to be driven except as directly necessary to accomplish that business purpose. In this event, if the vehicle can be returned to or be retrieved by the business establishment or registered owner, the peace officer may release and not impound the vehicle. (Veh. Code § 14607.6, subd. (c)(3).)

5) Provides a registered or legal owner of record at the time of impoundment may request a hearing to determine the validity of the impoundment, as specified. (Veh. Code § 14607.6, subd. (c)(4).)

6) States if the driver of a vehicle impounded, as specified, was not a registered owner of the vehicle at the time of impoundment, or if the driver of the vehicle was a registered owner of the vehicle at the time of impoundment but the driver does not have a previous conviction for driving on a suspended or revoked license, the vehicle shall be released pursuant to the Vehicle Code and is not subject to forfeiture. (Veh. Code § 14607.6, subd. (c)(5).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Human trafficking is modern day slavery and, currently in the United States, there are more than 100,000 American minors being exploited in the domestic minor sex trafficking industry. Unfortunately, sex trafficking among minors is only growing in California and continues to exploit the lives of children, leaving no city or county immune to the horrors of this industry.

   "Although steps have been taken to address sex trafficking within the past few years, the exploiters who sell these minors and the sex buyers are still fully operating in California. The sex buyers in particular perpetuate a violent, exploitative industry often without serious fines or sentencing. These sex buyers are committing a crime when they choose to participate in human trafficking and it must be addressed with penalties and awareness to fully and successfully combat human trafficking from all sides.

   "AB 2147 will give cities and counties the option to impound vehicles of sex buyers upon arrest regardless of whether or not the city or county has adopted a local ordinance allowing it. However, this bill includes provisions to allow a spouse, registered domestic partner, or other affected third party subjects to retrieve the vehicle on that grounds that it would create hardship."

2) **Vehicle Code Section 22659.5 Currently Authorizes the Same Procedures with Local Approval**: Existing law authorizes local jurisdictions to adopt ordinances declaring vehicles used in the commission of prostitution to be impounded as a public nuisance. Vehicle Code Section 22659.5 was enacted in 1993 and allowed a local government to impound a vehicle after a conviction for prostitution, as specified, for up to 48 hours. AB 1332 (Gotch), Chapter 485, Statutes of 1993, declared legislative intent as follows:

   "The Legislature hereby finds and declares that under the Red Light Abatement Law every building or place used for, among other unlawful purposes, prostitution is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered. It is recognized that in many instances vehicles are used in the commission of acts of prostitution and that if these vehicles were subject to the same procedures currently applicable to buildings and places, the commission of prostitution in vehicles would be vastly curtailed. The Legislature, therefore, intends to enact a five-year pilot program in order to ascertain whether declaring motor vehicles a public nuisance when used in the commission of acts of prostitution would have a substantial effect upon the reduction of prostitution in neighborhoods, thereby serving the local business owners and citizens of our urban communities."

   In 2009, the pilot program was extended to be a statewide program which permitted the same provisions and procedures in this bill to be adopted by local ordinance through passage of AB 14 (Fuentes), Chapter 210, Statutes of 2009.

   This bill would carve out the solicitation of prostitution offenses from pimping and pandering offenses. The programs for solicitation would be authorized under state law, while programs for pimping and pandering would continue to need local authorization under Veh. Code §

22659.5. Additionally, the bill limits the solicitation offenses to buyers rather than persons selling sexual services.

3) **O'Connell vs. City of Stockton**: In July of 2007, the California Supreme Court ruled that Vehicle Code Section 22659.5 pre-empted local ordinances on the subject of vehicle impoundment and forfeiture for specified crimes. (*O'Connell vs. City of Stockton* (2007) 41 Cal.4th 1061, 1068.) The Stockton ordinance at issue, the "Seizure and Forfeiture of Nuisance Vehicles", authorized impoundment and/or forfeiture "of any vehicle used to solicit an act of prostitution, or to acquire or attempt to acquire any controlled substance if found by a preponderance of evidence." (*O'Connell* at 1069.) Local ordinances that "duplicate, contradict or enter into an area totally occupied" by general state law are unconstitutional and preempted by the general state law. (*Sherwin Williams Co. vs. City of Los Angeles* (1993) 4 Cal.4th 893, 897.)

   First, the Court found the Uniform Controlled Substances Act (UCSA) impliedly occupied the entire field of drug sentencing and penalties including forfeiture of a vehicle. The UCSA requires forfeiture of a vehicle only upon proof beyond a reasonable doubt of the vehicle's use to facilitate certain serious drug crimes. (H. and Saf. Code § 11469; *O'Connell* at 1081.) Second, the Court held that Vehicle Code Section 22659.5(a) expressly pre-empted the provision related to vehicle forfeiture for solicitation. As noted above, the Vehicle Code provision does not authorize forfeiture and only allows for impoundment after conviction for a period of 48 hours. (Veh. Code § 22659.5, subd. (b).) Moreover, Vehicle Code Section 21 prohibits local governments from enacting ordinances on matters included by the Vehicle Code unless otherwise specified. Hence, because state law occupies the entire field of drug sentencing and penalties and specified Vehicle Code sections expressly speak to the issue of vehicle impoundment for prostitution, conflicting local ordinances are pre-empted and unconstitutional. (Calif. Const., Article XI, § 7.)

   The California Supreme Court asked the parties involved in this case to brief issues regarding federal and state constitutional guarantees of substantive and procedural due process for pre-conviction impoundment and forfeiture. Ultimately, however, because the Court ruled the Stockton ordinance was pre-empted by state law, the Court did not resolve the issues of due process. (*O'Connell* at 1068, fn. 1.) It is important to note the issue of due process still remains and may be litigated in the future.

4) **Argument in Support**: According to *The San Joaquin District Attorney's Office*, "[we] support your efforts set forth in Assembly Bill 2147. This bill would allow for the impoundment of vehicles belonging to sex purchasers, including those arrested for purchasing sex, or attempting to purchase sex, from children who are victims of human trafficking. The number of children who become victims of human trafficking is staggering, on a local, statewide and national level. These victims are our children, our future, deserving of dignity and respect which they do not encounter when they are repeatedly purchased and abused on a daily basis. The act of purchasing sex should not simply be considered an act of prostitution, the extent of this crime runs much deeper and the mind set surrounding these criminal acts must change.

   "In many instances, those who purchase, or attempt to purchase, sex from another, whether a child or an adult, can only be arrested and prosecuted for a misdemeanor offense. These offenses carry little or no consequence. Assembly Bill 2147 would provide a mechanism to

impound vehicles belonging to sex purchasers, providing an additional penalty designed to curtail the demand and impede the purchasers repeated conduct.

"We support Assembly Bill 2147 and applaud the authoring of this bill as it will be one more method of addressing the human trafficking epidemic."

5) **Argument in Opposition**: According to *The California State Sheriffs' Association*, "AB 2147 would limit existing law that allows for the impound of a vehicle used in the commission of a prostitution offense to the party buying or attempting to buy sexual services.

"Under existing law, a local government may adopt an ordinance declaring a motor vehicle to be a nuisance subject to an impoundment period of up to 30 days when the motor vehicle is involved in the commission of a crime related to prostitution or illegal dumping if the owner or operator of the vehicle has a prior conviction for the same offense within the past three years. This law applies to both the soliciting sexual services as well as the person providing the sexual services.

"We do not see a need to limit the application of this law. It is appropriate to allow for the impoundment of a vehicle if it is used in the commission of attempted commission of a prostitution offense inasmuch as it may deter or prevent future criminality. We also do not believe this law is too harsh given that, in order for a vehicle to be impounded pursuant to this authority, a person must be arrested for an offense for which he or she has a prior conviction in the last three years."

6) **Prior Legislation**:

a) AB 14 (Fuentes), Chapter 210, Statutes of 2009, authorized cities or counties to adopt local ordinances declaring a motor vehicle to be a public nuisance subject to impoundment for not more than 30 days upon a valid arrest of a person who uses the vehicle in the commission or attempted commission of specified prostitution crimes or illegal commercial dumping and has one prior conviction for either of those crimes.

b) AB 1724 (Jones), of the 2007-08 Legislative Session, would have authorized a city, county, or a city and county to adopt an ordinance declaring, under specified conditions, a motor vehicle used in the commission or the attempted commission of an act that constitute the illegal dumping of commercial quantities of waste matter upon a public or private highway or road a public nuisance subject to seizure and 30-day impoundment. AB 1724 was vetoed.

c) AB 1145 (Huff), of the 2007-08 Legislative Session, would have authorized vehicle seizure and forfeiture when the owner of the vehicle uses it in connection with the commission of a crime of vandalism, as specified. AB 1145 failed passage in this Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
San Joaquin District Attorney's Office

Opposition

California State Sheriffs' Association

Analysis Prepared by: Gabriel Caswell / PUB. S. / (916) 319-3744

Date of Hearing: April 5, 2016
Consultant: Matt Dean

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2169 (Travis Allen) – As Introduced February 17, 2016

SUMMARY: Prohibits a person from maintaining or operating a place of business in which drug paraphernalia is kept, displayed or offered in any manner, sold, furnished, transferred or given away and deletes provisions of law authorizing these activities under certain conditions.

EXISTING LAW:

1) States that it is unlawful to possess an opium pipe or any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking specified controlled substances, however, it is not unlawful until January 1, 2021, for a person to possess solely for personal use hypodermic needles or syringes if acquired from a physician, pharmacist, hypodermic needle and syringe exchange program, or any other source that is authorized by law to provide sterile syringes or hypodermic needles without a prescription. (Health & Saf. Code, § 11364, subds. (a) and (c).)

2) Provides that, except as authorized by law, no person shall maintain or operate any place of business in which drug paraphernalia is kept, displayed or offered in any manner, sold, furnished, transferred or given away unless such drug paraphernalia is completely and wholly kept, displayed or offered within a separate room or enclosure to which persons under the age of 18 years not accompanied by a parent or legal guardian are excluded. Each entrance to such a room or enclosure shall be signposted in reasonably visible and legible words to the effect that drug paraphernalia is kept, displayed or offered in such room or enclosure and that minors, unless accompanied by a parent or legal guardian, are excluded. (Health & Saf. Code, § 11364.5, subd. (a).)

3) States that, except as authorized by law, no owner, manager, proprietor or other person in charge of any room or enclosure, within any place of business, in which drug paraphernalia is kept, displayed or offered in any manner, sold, furnished, transferred or given away shall permit or allow any person under the age of 18 years to enter, be in, remain in or visit such room or enclosure unless such minor person is accompanied by one of his or her parents or by his or her legal guardian. (Health & Saf. Code, § 11364.5, subd. (b).)

4) Prohibits, unless authorized by law, any person under the age of 18 years from entering, being in, remaining in or visiting any room or enclosure in any place of business in which drug paraphernalia is kept, displayed or offered in any manner, sold, furnished, transferred or given away unless accompanied by one of his or her parents or by his or her legal guardian. (Health & Saf. Code, § 11364.5, subd. (c).)

5) Defines "drug paraphernalia" to mean "all equipment, products, and materials of any kind which are intended for use or designed for use, in planting, propagating, cultivating, growing,

harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance." "Drug paraphernalia" includes, but is not limited to, all of the following:

a) Kits intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

b) Kits intended for use or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

c) Isomerization devices intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance;

d) Testing equipment intended for use or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances;

e) Scales and balances intended for use or designed for use in weighing or measuring controlled substances;

f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, intended for use or designed for use in cutting controlled substances;

g) Separation gins and sifters intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

h) Blenders, bowls, containers, spoons, and mixing devices intended for use or designed for use in compounding controlled substances;

i) Capsules, balloons, envelopes, and other containers intended for use or designed for use in packaging small quantities of controlled substances;

j) Containers and other objects intended for use or designed for use in storing or concealing controlled substances;

k) Hypodermic syringes, needles, and other objects intended for use or designed for use in parenterally injecting controlled substances into the human body; and,

l) Objects intended for use or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body. (Health & Saf. Code, § 11364.5, subd. (d).)

6) Allows a court, in determining whether an object is drug paraphernalia, to consider, in addition to all other logically relevant factors, the following:

a) Statements by an owner or by anyone in control of the object concerning its use;

b) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;

c) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he or she knows, or should reasonably know, intend to use the object to facilitate a violation of this section. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this section shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia;

d) Instructions, oral or written, provided with the object concerning its use;

e) Descriptive materials, accompanying the object which explain or depict its use;

f) National and local advertising concerning its use;

g) The manner in which the object is displayed for sale;

h) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

i) The existence and scope of legitimate uses for the object in the community; and,

j) Expert testimony concerning its use. (Health & Saf. Code, § 11364.5, subd. (e).)

7) Contains an exemption for any pharmacist, physician, dentist, podiatrist, veterinarian or manufacturer, wholesaler, or retailer licensed by the California Board of Pharmacy who legally furnishes, prescribes, sells, or transfers hypodermic syringes, needles, and other objects designed for use or marketed for use in parenterally injecting controlled substances into the human body. (Health & Saf. Code, § 11364.5, subd. (f)(1)-(3).)

8) Provides that, except as authorized by law, any person who delivers, furnishes, or transfers, possesses with intent to deliver, furnish, or transfer, or manufactures with the intent to deliver, furnish, or transfer, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance, except as provided, is guilty of a misdemeanor. (Health & Saf. Code, § 11364.7, subd. (a).)

9) States that, except as authorized by law, any person who manufactures with intent to deliver, furnish, or transfer drug paraphernalia knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body cocaine, cocaine base, heroin, phencyclidine, or methamphetamine is punishable as a misdemeanor or a felony. (Health & Saf. Code, § 11364.7, subd. (b).)

10) Exempts medical marijuana patients from the prohibition against possession and cultivation of marijuana if used for personal medical purposes. (Health & Saf. Code, § 11362.5, subd. (d).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Federal and state laws never intended to allow illegal drug tools to be sold. California can no longer turn a blind eye to this illegal activity that allows our children to be taken advantage of and encourages them to use illegal drugs."

2) **Medical Marijuana Laws**: In 1996, voters passed Proposition 215, the Compassionate Use Act, which authorizes a patient or the patient's primary caregiver to possess marijuana or cultivate marijuana for the patient's medical use upon the written or oral recommendation of a physician. (Health and Saf. Code, § 11362.5.)

   The Compassionate Use Act of 1996 ensures that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief. The Act also ensures that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction. (Health and Saf. Code, § 11362.5.)

   In 2003, the Legislature clarified the Compassionate Use Act with SB 420 (Vasconcellos), Chapter 875, Statutes of 2003, known as the Medical Marijuana Program Act (MMPA). The MMPA offered a voluntary identification card which patients and caregivers could obtain that would additionally protect them from arrest. The MMPA also set limits on the amounts of marijuana to be legally grown and possessed, however, the California Supreme Court ruled in *People v. Kelly* (2010) 47 Cal.4th 1008, that the MMPA section limiting quantities of marijuana is unconstitutional because it amends a voter initiative.

   The Compassionate Use Act protects caregivers and patients who possess or cultivate medical marijuana use, but, people who engage in these activities remain liable for federal arrest and prosecution, and those who operate dispensaries face frequent federal enforcement actions. The U.S. Supreme Court ruled in *Gonzales v. Raich* (2005) 545 U.S. 1, that the federal government can enforce marijuana prohibition despite state medical-marijuana laws. Thus, the CUA and the MMPA have no effect on federal enforceability of the federal Controlled Substances Act.

   After several failed legislative attempts to regulate the medical marijuana industry, in 2015, the Legislature enacted the Medical Marijuana Regulation and Safety Act. (AB 243 (Wood), Chapter 688, Statutes of 2015, AB 266 (Bonta), Chapter 689, Statutes of 2015, and SB (McGuire), Chapter 719, Statutes of 2015.) The Act, among other things, requires licenses for cannabis dispensaries and creates a new state agency to oversee the industry.

3) **2016 Ballot Initiatives**: This year, California voters will likely have the opportunity to vote on at least one ballot measure to legalize non-medical marijuana. Although multiple competing measures have been filed, the Adult Use of Marijuana Act is the most likely to qualify for the 2016 ballot. The Adult Use of Marijuana Act, if approved, would tax and regulate marijuana in a manner similar to alcohol while allowing adults, age 21 and older, to possess and cultivate marijuana as sanctioned by the measure without fear of prosecution. (*Pot Legalization Efforts Now Down to One Major Initiative*, L.A. Weekly (Jan. 5, 2016) <http://www.laweekly.com/news/pot-legalization-efforts-now-down-to-one-major-initiative-6447387> [as of January 6, 2016].)

   If recreational use of marijuana is approved by the voters this year, possession, smoking, ingestion and cultivation will be legal activities. Additionally, these activities are already legal for patients who use marijuana for medicinal purposes. Considering that current law already restricts businesses from selling, displaying or transferring drug paraphernalia which includes items that assist in smoking or growing marijuana, would further restricting the availability of drug paraphernalia unnecessarily burden lawful activities?

4) **Argument in Support**: According to the *California Police Chiefs Association*, "Drug usage is a problem that continues to increase, mostly because of its availability to the general population. California shops that sell drug paraphernalia accommodate illicit drug users, making it easier for them to abuse various illegal drugs. The National Institute on Drug Abuse Cited in 2012, that in Los Angeles County alone, marijuana accounted for the highest percentage (27 percent) of drug treatment admissions. The usage of illegal drugs is not only harmful to one's self, but also negatively impacts the state of California.

   "Existing law prohibits a person from maintaining or operating any place of business in which drug paraphernalia is kept, displayed, or offered in any manner, sold, furnished, transferred, or given away. Too many localities and law enforcement entities are struggling to keep up with the abuses to this law, and this bill will help them immensely. AB 2169 will install a necessary standard to prohibit shops from selling illegal glass pipes and drug paraphernalia."

5) **Argument in Opposition**: According to the *American Civil Liberties Union*, "Many of the items on the list of 'drug paraphernalia' have lawful uses, including for the consumption of medical marijuana. Completely banning retail sales of these items is excessive and unwarranted from a public health perspective.

   "The Compassionate Use Act, approved by the voters in Proposition 215, specifically states that a 'qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana' and 'may also maintain no more than six mature or 12 immature marijuana plants.' Health & Safety Code § 11362.77. AB 2169 would ban retail sale of items legitimately used by qualified patients and their caregivers to grow and consume medical marijuana. It would also ban the sale of items that eliminate the negative health impacts of smoking marijuana, such as vaporizers. Making it more difficult for qualified patients to grow and consume medical marijuana is inconsistent with the will of the voters.

   "Moreover, the voters will likely decide soon whether California should decriminalize possession and consumption of small amounts of marijuana for recreational purposes. The

Legislature should not now be completely prohibiting the sale of the items related to what may soon become a legitimate business in California.

"In addition, the proposed bill contradicts the advice of experts on how to prevent the harms of substance use. It is recognized that the availability of sterile syringes reduces the spread of HIV and hepatitis C. Previous state legislation has reduced or removed the legal barriers to accessing sterile syringes, in the interest of preventing transmission of HIV or viral hepatitis. In 2014 AB 1734 (Ting) passed and was signed into law by Governor Brown, allowing non-prescription pharmacy sales of syringes and personal possession of syringes in order to most effectively eliminate HIV and hepatitis C transmission among people who inject drugs. AB 2169 would move in the opposite direction and is contrary to the best practices for promoting public health."

6) **Prior Legislation**:

a) AB 261 (Travis Allen), of the 2015-16 Legislative Session, is identical to this bill. AB 261 died in Committee.

b) AB 1811 (Ammiano), of the 2009-10 Legislative Session, would have revised the definition of "drug paraphernalia" to include those same objects when designed or marketed for use in the unlawful conducts of those acts, including the unlawful ingesting, inhaling, or other introduction of those controlled substances into the human body. AB 1811 failed passage on the Assembly Floor.

REGISTERED SUPPORT / OPPOSITION:

Support

Action Network Family Resource Center
California Police Chiefs Association
California Narcotic Officers' Association
Central Valley Recovery Services, Inc.
Huntington Beach Police Chief
Palomar Health Communities Coalition Escondido
Partnership for a Positive Pomona
San Marcos Prevention Coalition
Santee Solutions Coalition
Take Back America Campaign
Wellness and Prevention Center
5 private individuals

Opposition

American Civil Liberties Union
Drug Policy Alliance

Analysis Prepared by: Matt Dean / PUB. S. / (916) 319-3744

Date of Hearing: April 5, 2016
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2199 (Campos) – As Amended March 30, 2016

PULLED BY THE AUTHOR

Analysis Prepared by: Gabriel Caswell / PUB. S. / (916) 319-3744

Date of Hearing: April 5, 2016
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2205 (Dodd) – As Amended March 30, 2016

SUMMARY: Overturns a Supreme Court case holding that a court lacks jurisdiction to adjudicate violations of probation occurring after the original term of probation ends. Specifically, **this bill**:

1) Provides that the period of time during any revocation of probation, mandatory supervision, or post-release community supervision, summary or otherwise, shall not be credited toward any period of supervision, except that such as stay cannot extend beyond five years from the date of the summary revocation unless the court finds that an even longer stay is needed based on the seriousness of the current conviction or on the defendant's past criminal record.

2) Prohibits the extended stay from lasting more than 10 years from the date of the last summary revocation.

3) States that, as to mandatory supervision and post-release community supervision, the person shall not remain in custody for a period longer than the term of supervision authorized by statute.

EXISTING LAW:

1) Defines "probation" as "the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer." (Pen. Code, § 1203, subd. (a).)

2) Gives the court discretion in felony cases to grant probation for up to five years, or no longer than the prison term that can be imposed when the prison term exceeds five years. (Pen. Code, § 1203.1, subd. (a).)

3) Gives the court discretion in misdemeanor cases to generally grant probation for up to three years, or no longer than the consecutive sentence imposed if more than three years. (Pen. Code, § 1203a.)

4) Allows a probation officer, parole officer, or peace officer to arrest a person without warrant or other process during the period that a person is released on probation, conditional sentence or summary probation, mandatory supervision, postrelease community supervision, or parole supervision, if the officer has probable cause to believe that the supervised person is violating the terms of his or her supervision. (Pen. Code, § 1203.2, subd. (a).)

5) Authorizes a court to revoke and terminate the supervision of the person if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the

probation or parole officer or otherwise that the person has violated any of the conditions of his or her supervision, has become abandoned to improper associates or a vicious life, or has subsequently committed other offenses, regardless whether he or she has been prosecuted for such offenses. (Pen. Code, § 1203.2, subd. (a).)

6) Prohibits the revocation of supervision for the defendant's failure to pay restitution imposed as a condition of supervision unless the court determines that the defendant has willfully failed to pay and has the ability to pay. (Pen. Code, § 1203.2, subd. (a).)

7) States that the revocation, summary or otherwise, shall serve to toll the running of the period of supervision. (Pen. Code, § 1203.2, subd. (a).)

8) Provides that a court, upon its own motion or upon the petition of the supervised person, the probation or parole officer, or the district attorney, may modify, revoke, or terminate supervision of the person pursuant to this subdivision. (Pen. Code, § 1203.2, subd. (b)(1).)

9) States that, upon any revocation and termination of probation the court may, if the sentence has been suspended, pronounce judgment for any time within the longest period for which the person might have been sentenced. On the other hand, if the judgment has been pronounced and its execution suspended, the court may revoke the suspension and order that the judgment be in full force and effect. (Pen. Code, § 1203.2, subd. (c).)

10) Provides that the probationary period terminates automatically on the last day. (Pen. Code, § 1203.3, subd. (b)(3).)

11) States that if a probationer is committed to prison for another offense, the court which placed him or her on probation has the jurisdiction to impose sentence. (Pen. Code, § 1203.2a.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "This bill clarifies that, for all three types of supervision – probation, mandatory and post-release community supervision -- time elapsed during the revocation period shall not be credited toward any period of supervision. Thus, if a court summarily revokes supervision, this bill preserves court authority to determine the consequences of all alleged supervision violations, both those that occurred during the original supervision term and those that occurred after the court revoked supervision.

   "Under AB 2205, once a court has regained physical custody and determined that a person has violated supervision, a court may require the person to comply with court-imposed terms and conditions of supervision, whether or not the violation occurred during the original term of supervision. As a result this bill not only enhances public safety, but also supports the goal of Criminal Justice Realignment to reduce recidivism through rehabilitative supervision."

2) **Expiration of Supervision**: In the absence of an order revoking probation, probation expires by operation of law on the last day of the probationary period. (Pen. Code, § 1203.3, subd. (b)(3).) After that, the court has no jurisdiction over the person. (*In re Griffin* (1967) 67

Cal.2d 343, 346; *Hilton v. Superior Court* (2014) 239 Cal.App.4th 766, 772-773.) However, an agreement by defense counsel or the defendant to a probationary period longer than the maximum statutory period estops a claim that probation has expired. (*People v. Ford* (2015) 61 Cal.4th 282, 286-288; *People v. Jackson* (2005) 134 Cal.App.4th 929, 933.)

A term of mandatory supervision lasts for the remaining unserved portion of the sentence imposed by the court. (Pen. Code, § 1170, subd. (h)(5)(B).)

A term of post-release community supervision lasts for three years from the date of the initial entry onto post-release community supervision, except where the supervision has been tolled. (Pen. Code, § 3455, subd. (e).)

3) **Summary Revocation**: A trial court has the authority to modify, revoke or terminate probation at any time during the probationary period. (Pen. Code, §§ 1203.2, subd. (b)(1); 1203.3, subd. (a).) This power includes the power to extend the probationary term. "A change in circumstances is required before a court has jurisdiction to extend or otherwise modify probation." (*People v. Cookson* (1991) 54 Cal.3d 1091, 1095.)

   The revocation process is generally divided into two components: the summary revocation and a subsequent formal revocation hearing where a final decision is made whether to reinstate, permanently revoke or terminate probation. The court may summarily revoke a defendant's probation at any time during the period of probation if it believes the defendant has violation probation. (Pen. Code, § 1203.2, subd. (a).) A summary revocation serves to toll the running of the probationary period. (*Id.*)

   Revocation, modification, and tolling of post-release community supervision functions similarly. (See Pen. Code, § 3455, citing Pen. Code, § 1203.2.)

4) **Tolling of Probation:** Courts were divided regarding the effect of the tolling provision in Penal Code § 1203.2, subdivision (a). Specifically, the question courts had disagreed on is whether the tolling provision permits a trial court to find a violation of probation and then reinstate or terminate probation based solely on conduct that occurred *after* the original probationary period had expired. In *People v. Tapia* (2001), 91 Cal.App.4th 738, the court held that "a summary revocation of probation suspends the running of the probationary period and permits extension of the term of probation if, and only if, the probation is reinstated based upon a violation that occurred during the unextended period of probation. (*Tapia, supra*, 91 Cal.App.4th at p. 741.) In *People v. Salas* (2012) 210 Cal.App.4th 974, the court disagreed with the *Tapia* court and held that the summary revocation suspended the running of defendant's probationary term until a future date where the trial court either reinstates probation, executes sentence or discharges the defendant from probation. (*Salas, supra*, 210 Cal.App.4th at pp. 979-980.)

   In *People v. Leiva* (2013) 56 Cal.4th 498, the California Supreme Court resolved the issue and held that the tolling provision preserves the trial court's authority to adjudicate in a subsequent formal probation violation hearing whether the probationer violated probation during, but not after, the court-imposed probationary period. (*Id.* at p. 502.).

5) ***People v. Leiva, supra*, 56 Cal.4th 498**: In *Leiva*, the defendant was placed on probation for a period of three years on April 11, 2000. (*Leiva, supra*, 56 Cal.4th at p. 502.) Among the

probation conditions imposed were orders that the defendant report to the probation officer following his release from county jail and that he not reenter the county illegally if he was deported. (*Ibid.*) On the day defendant was released from jail, he was deported to El Salvador. (*Ibid.*) In September 2001, the trial court summarily revoked probation and issued a bench warrant after defendant failed to report to the probation officer. (*Ibid.*) At the time, neither the probation department nor the court knew that the reason for the failure to report or to appear in court was the deportation. (*Ibid.*)

In November 2008, defendant was brought to court on the probation violation following his arrest on a traffic matter. (*Leiva, supra*, 56 Cal. 4th at p. 503.) By the time of the formal violation hearing on February 13, 2009, the court and parties knew of defendant's involuntary deportation and the prosecutor conceded that he could not show that the 2001 failure to report had been a willful probation violation. (*Ibid.*) Defense counsel argued that probation must be terminated since there was no evidence of any probation violation during the original term of probation. (*Ibid.*) However, the court found that defendant did violate probation when he failed to report to probation following his return to the United States. The court reinstated probation and ordered it extended until June 6, 2011 and additionally ordered that, if defendant voluntarily left the country again or was deported, he must report to his probation officer within 24 hours of his return to the United States and present proof that he was in the country legally. Defendant appealed. (*Ibid.*)

Defendant was deported again in March of 2009, and in June of 2009 the court summarily revoked his probation based on failure to report to the probation officer and issued a bench warrant for his arrest. (*Leiva, supra*, 56 Cal. 4th at pp. 503-504.) Defendant later returned to California and was arrested on the outstanding warrant. On October 9, 2009, the trial court held a formal probation violation hearing and found that defendant had violated his probation for re-entering the country illegally in 2009. The court ordered that probation remain revoked and sentenced defendant to two years in state prison based on one of the counts to which defendant had pleaded no contest in 2000. (*Id.* at p. 504.) On appeal, defendant argued that the trial court erred by finding a violation of probation based on conduct that occurred after his original three-year probationary period expired. (*Ibid.*) The Court of Appeal rendered a split decision with the majority upholding the trial court's decisions. The California Supreme Court reversed the judgments of the Court of Appeal. (*Ibid.*)

In construing the tolling provision in Penal Code Section 1203.2, subdivision (a), the California Supreme Court held that the statute "preserves the trial court's authority to adjudicate, in a subsequent formal probation violation hearing, whether the probationer violated probation during, but not after, the court-imposed probationary period." (*Leiva, supra*, 56 Cal. 4th at p. 502.) The Court rejected a reading of the tolling provision "as allowing a trial court, through summary revocation, to extend indefinitely the conditions and terms of probation until a formal revocation proceeding can be held." (*Id.* at p. 509.) The Court stated that such interpretation "raises serious due process concerns because . . . [it] would extend a defendant's probationary term indefinitely without notice or a hearing as to the propriety of such an increase." (*Ibid.*)

The Court also relied on legislative history to determine that the tolling language was added to Penal Code Section 1203.2, subdivision (a) to address jurisdictional problems that can arise when a formal revocation hearing cannot be held during the court-imposed period of probation. (*Leiva, supra*, 56 Cal. 4th at p. 511.) The Court referenced "the Assembly

Committee on Criminal Justice's comments to Senate Bill 426 to support the conclusion that the Legislature in 1977 was focused on preserving the jurisdiction of the trial court to hold formal probation violation hearings that met . . . [due process] requirements after the period of probation had expired. . . . [The Legislature] expressed concern that former section 1203.2 did not address the situation in which a trial court summarily revoked probation and the defendant did not appear in court on the violation. Senate Bill 426 was considered a 'cleanup measure' (citation omitted), designed to preserve a trial court's authority to hold a full hearing on an alleged probation violation that occurred during the court-imposed probationary period." (*Id.* at pp. 512-513.)

The ruling in *Leiva* is supported by long-standing case law. As early as 1918, a Court of Appeal held that the trial court loses jurisdiction or power to make an order revoking or modifying the order after the probationary period has expired. (*People v. O'Donnell* (1918) 37 Cal.App. 192, 196-197.) Once a revocation order is in effect, the trial court retains jurisdiction in the case only to pronounce judgment by imposing the sentence if imposition of sentence had been suspended, or by ordering execution of the previously ordered but suspended sentence. (*People v. Williams* (1944) 24 Cal.2d 848, 851-854.) The court must find that the probationer violated probation during the original period of probation, even if the term of probation was tolled, in order for the trial court to retain jurisdiction to revoke probation after the expiration of the probation term. (*People v. Burton* (2009) 177 Cal.App. 4th 194, 200; *People v. Tapia*, *supra*, 91 Cal.App.4th at p. 741.)

The *Leiva* decision does not prevent a court from holding absconders accountable. If a probationer absconds at any time during the period of probation and the court summarily revokes probation, the probationer is not relieved of the duty to comply with the probation terms and conditions. There is "no 'window' during the probationary term which allows the probationer to be free from the terms and conditions originally imposed or later modified." (*People v. Lewis* (1992) 7 Cal.App.4th 1949, 1954.) Therefore, all terms and conditions of probation including restitution orders, search and seizure, and the requirement to obey all laws would still be in effect during the court-imposed term of probation after a summary revocation. Once the absconder is found and brought back to court, the court has the jurisdiction to find that the person violated probation for all conduct that occurred during the original probation term.

Overturning *Leiva* would mean that the terms and conditions of probation could remain in effect for years after the original term of probation has expired. As stated in the *Leiva* case, this "would result in absurd consequences and present constitutional concerns. . ." (*Leiva*, *supra*, 56 Cal. 4th at p.509.) Even if a probation violation within the original term of probation is not proven, the person would still be subject to all of the terms and conditions during the entire time that the probation term is tolled.

This bill would overturn *People v. Leiva*, *supra*, 56 Cal.4th 498. The bill extends the period of supervision after a summary revocation by requiring all terms and conditions of supervision to remain in effect during the tolling time period, regardless of whether the originally imposed period of supervision has expired. But rather than extending the supervisory period indefinitely, as was the concern in *Leiva*, the bill provides that the supervisory period can be extended for up to 5 years, unless the court decides that based on the defendant's record, the supervisory period should last for up to 10 years.

That the supervisory period will last 5 or 10 years, rather than indefinitely, does not alleviate the due process concerns. Notably, this potential stay will be double, or triple (or more) the original term of supervision. The court can impose additional sanctions perhaps a decade after the supervision should have ended. And this decade-long extension will have occurred without notice or a hearing as to the propriety of such an increase. (*People v. Leiva, supra,* 56 Cal.4th at p. 509.)

It bears repeating that the court can still hold a defendant accountable for any violations committed during the mandated supervisory period. And if a person commits a new violation of law after that period of supervision, the prosecutor is authorized to file new charges.

6) **Argument in Support**: According to the *Judicial Council of California*, the sponsor of this bill, "AB 2205 clarifies that, for all three types of supervision—probation, mandatory and post-release community supervision—time elapsed during the revocation period shall not be credited toward any period of supervision. Thus, if a court summarily revokes supervision, AB 2205 preserves court authority to determine the consequences of all alleged supervision vioaltions, both those that occurred during the original supervision term and those that occurred after the court revoked supervision.

"Under AB 2205, once a court has regained physical custody and determined that a person has violated supervision, a court may require the person to comply with court-imposed terms and conditions of supervision, whether or not the violation occurred during the original term of the supervision. As a result, this bill not only enhances public safety, but also supports the goal of Criminal Justice Realignment to reduce recidivism through rehabilitative supervision.

"Finally, AB 2205 enhances judicial discretion by preserving court jurisdiction to adjudicate revocations of probation, mandatory supervision, and postrelease community supervision."

7) **Argument in Opposition**: According to the *American Civil Liberties Union of California*, "For all forms of supervised release, the court may summarily revoke the supervised release based on an allegation that the defendant violated the terms and conditions of release. If the defendant is not present in court when the supervised release is summarily revoked, the court issues a bench warrant for the person's arrest. The court must eventually hold a hearing to determine if there is a factual basis for the alleged violation of the conditions of release. (See *People v. Leiva* (2013) 56 Cal.4th 498, 504-505.)

"The question raised by the bill is what happens when the hearing on the summary revocation is held after the original period of supervised release has ended. AB 2205 seeks to overturn a recent ruling of the California Supreme Court which held that, in the case of probation specifically, if there is no evidence that the defendant violated the terms of probation during the original period of probation, the court may not place the defendant back on probation after the original term has lapsed. (*People v. Leiva*, 56 Cal.4th at pp. 502.) On the other hand, the *Leiva* court made clear that the judge may reinstate and extend probation if there is evidence that the defendant violated the terms and conditions of probation during the period of supervised release, even if the violation is not adjudicated until years later. (*Ibid.*) AB 2205 seeks to undo that ruling and allow a court to place a person back on probation, based on evidence that he or she did not comply with the conditions of probation after the probationary period had lapsed, and seeks to extend that new rule to the other forms of court

supervised release: mandatory supervision and postrelease community supervision.

"We believe that the rule announced by the California Supreme Court in *Leiva* is fair and should not be changed. The *Leiva* decision made clear that if a person violates the terms of probation during the probationary period, the court may reinstate and extend probation, even if the defendant is not brought before the court for the hearing on the summary revocation until years later. We agree with the California Supreme Court that is it unfair to allow the court to place someone back on probation based on conduct that did not occur during the original probationary term. This rule provides the court with the ability to respond to proven, willful violations of probation that occur during the probationary period, even if the defendant evades the jurisdiction of the court for some time. At the same time, the rule prevents the unfairness of placing people back on probation years later, when there is no actual evidence that they violated the conditions of supervised release during the period originally imposed by the court. (*Id.* at pp. 516-517.) ...

"The sponsor of AB 2205, the Judicial Council, appears to think that the *Leiva* ruling prevents the court from placing a defendant back on supervised release after the original term has ended if the defendant 'absconded.' If by 'absconded,' the Council means the person intentionally absented himself or herself from the courts' jurisdiction, then we disagree with this interpretation. If a person intentionally avoids the jurisdiction of the supervising court, that is a violation of the terms and conditions of supervised release and, under *Leiva*, a sound basis for reinstating and extending the period of supervised release."

8) **Related Legislation**: AB 2477 (Patterson) would overturn case law holding that a court lacks jurisdiction to modify a restitution order after the defendant's probation expires, thereby extending jurisdiction for restitution indefinitely AB 2477 failed passage and reconsideration was granted in this committee.

9) **Prior Legislation**: AB 2339 (Quirk), of the 2013-2014 Legislative Session, would have required that all the terms and conditions of probation supervision remain in effect during the time period that the running of probation supervision is tolled as a result of a summary revocation by the court. AB 2339 was pulled by the author.

REGISTERED SUPPORT / OPPOSITION:

Support

Judicial Council (Sponsor)
California District Attorneys Association
California Judges Association
California State Sheriffs' Association
Chief Probation Officers of California

Opposition

American Civil Liberties Union of California
California Attorneys for Criminal Justice
California Public Defenders Association
Legal Services for Prisoners with Children

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744

Date of Hearing: April 5, 2016
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2228 (Cooley) – As Amended March 17, 2016

SUMMARY: Establishes the Code Enforcement Officers Standards Act (CEOSA) which requires the Board of Directors of the California Association of Code Enforcement Officers (CACEO) to develop and maintain standards for the designation of Certified Code Enforcement Officers (CCEO's). Specifically, **this bill**:

1) Provides that for the purposes of the Code the following terms have the following meaning:

   a) "Board" means the duly elected Board of Directors of CACEO;

   b) "CACEO" means California Association of Code Enforcement Officers a public benefits corporation domiciled in California;

   c) "CCEO means a Certified Code Enforcement certified pursuant to the CEOSA;

   d) "Code Enforcement Officer" means an person who is not a peace officer and who is employed by a governmental subdivision, public or quasi-public corporation, public agency, public service corporation, a town, city, county, or municipal corporation, whether incorporated or chartered, who has enforcement authority for health, safety, and welfare requirements, and whose duties include enforcement of a statute, rule, regulation, or standard, and who is authorized to issue citations or file formal complaints.

2) Requires the board to develop and maintain standards for the various classes of CCEO's that it designates. The standards for education, training, and certification shall be adopted by the board and meet the minimum requirements of the CEOSA, and CCEO's shall not have the powers of arrest unless authorized by the city, county, or city and county charter, code, or regulations in which they operate. CCEO's shall not have access to summary criminal history information, but persons employed by a city, county or city and county upon a showing of compelling need if the criteria for access under existing law is otherwise met.

3) Requires the board to review all applications from cities, counties, city and counties, and accredited educational institutions who seek to develop and provide education designed to qualify participants as CCEO's. All applications that are submitted are subject to the boards review and approval to determine if they demonstrate the equivalency of the standards adopted under the rules of the board in order to qualify as Code Enforcement Officer Education Program Providers (program providers).

4) States that all program providers are subject to ongoing program review and evaluation under the board's administrative rules. A program provider shall renew its program provider application and obtain approval under the board's administrative rules no later than 36

months from the date of the last approval or else it shall lapse.

5) Provides that all students, participants, and employees who successfully pass the minimum education and certification requirements of the program provider approved curriculum shall, subject to the same fees as other registered CCEO's under the board's administrative rules, be granted status as CCEO's in an equivalent manner as applicants who attained certification through the CACEO education and certification program and academics.

6) States that the development and perpetual advancement of code enforcement officer professional standards and actively providing related educational offerings that lead to increased professional competence and ethical behavior shall be the highest priority for the board in its licensing, certification, and disciplinary functions. Whenever the advancement of code enforcement officer professional standards and the provision of related educational offerings is inconsistent with other interests sought to be promoted, the former shall be paramount.

7) Provides that the board's administrative rules shall designate minimum training, qualifications, and experience requirements for applicants to qualify for the CCEO designation, including, but not limited to, training and competency requirements in the areas of land use and zoning laws, health and housing codes, building and fire codes, environmental regulations, sign standards, public nuisance laws, applicable constitutional law, investigation and enforcement techniques, application of remedies, officer safety, and community engagement. The board may, by administrative rule, designate additional classes of certifications to help meet its mission.

8) Requires the board to conspicuously and continually publish its list of CCEOs on the CACEO Internet Web site, containing the registrant's full name, summary status as to individual disciplinary concerns, active or inactive status, date of active CCEO expiration, and business address, unless the business address is a residence, which shall be treated as confidential.

9) States that a CCEO shall hold a valid certificate designating the person as a CCEO issued by the CACEO, shall at all times remain a member in good standing of the CACEO, and shall be subject to ongoing continuing education and registration requirements as designated by the board's administrative rules.

10) Provides that a failure to maintain the continuing education requirements shall cause the certification status to lapse, subject to redemption as specified by the board's administrative rules. Once a certification lapses, the certification status shall automatically convert to inactive CCEO status unless it is redeemed. The rights, privileges, and procedures or limitations on redemption of inactive CCEOs shall be specified in the board's administrative rules.

11) Requires the board to annually set fees in amounts that are reasonably related and necessary to cover the cost of administering this chapter. The fees shall be set by the board and published on the CACEO Internet Web site and maintained at the CACEO's headquarters.

12) Provides that he board shall maintain a register of each application for a certificate of registration under this chapter. The register shall include all of the following:

(a) The name, residence, date of birth, and driver's license number (including state or country of origin) of the applicant;

(b) The name and address of the employer or business of the applicant;

(c) The date of the application;

(d) The education and experience qualifications of the applicant;

(e) The action taken by the board regarding the application and the date of the action;

(f) The serial number of any certificate of registration issued to an applicant; and

(g) Any other information required by board rule.

13) States that a person may not hold himself or herself out to be a Certified Code Enforcement Officer in this state or use the title "Certified Code Enforcement Officer" in this state unless the person holds a certificate of registration pursuant to this chapter.

14) Requires the board, by administrative rule, create a process to timely consider and review all applicants who hold certification from any other agency, and allow them to seek review and potential approval of the qualifications to potentially be recognized as a CCEO in this state. A denial of full recognition as a CCEO shall be accompanied by written justification and a list of required steps that may be required for the individual applicant to complete the registration and certification process. Recognition fees shall be set as specified.

15) Provides that board shall adopt administrative rules to process information, investigate allegations or suspicions of applicants or licensees providing false information, failing to disclose material information on the registration application, or not providing any information that may, either before or during the certification process, disqualify the applicant or certificant as specified. The board shall adopt procedures and guidelines to impose any discipline, revocation of certification, or sanction, for cause, against any applicant, registrant, or certificant.

16) States that the administrative rules shall provide the applicant or registrant with adequate and fair notice and hearing opportunities prior to the board taking any adverse action against the applicant or certificant.

17) Provides that any factual finding after a hearing that the board concludes is cause for revocation, suspension, or other disciplinary or administrative action against a registration or certification shall result in an order after hearing that meets the fair notification requirements of this section.

18) All orders after hearing shall be deemed final under the board's authority and procedures and may be appealed as specified in the Code of Civil Procedure.

19) States that the requirements of the CEOSA do not interfere with the regulations or certification requirements for building inspectors as specified

EXISTING LAW:

1) Defines "code enforcement officer" as a person who is not described in Penal Code Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 and who is employed by a governmental subdivision, public or quasi-public corporation, public agency, public service corporation, a town, city, county, or municipal corporation, whether incorporated or chartered, who has enforcement authority for health, safety, and welfare requirements, and whose duties include enforcement of a statute, rule, regulation, or standard, and who is authorized to issue citations or file formal complaints. States that a "code enforcement officer" is also a person who is employed by the Department of Housing and Community Development who has enforcement authority for health, safety, and welfare requirements, as specified. (Pen. Code, § 829.5.)

2) Defines a "code enforcement officer" as any person who is not a peace officer and who is employed by any governmental subdivision; public or quasi-public corporation; public agency; public service corporation; or any town, city, county, or municipal corporation, whether incorporated or chartered, who has enforcement authority for health, safety, and welfare requirements; whose duties include enforcement of any statute, rules, regulations, or standards; and who is authorized to issue citations, or file formal complaints. (Pen. Code, Section 243, subd. (f)(11)(A).)

3) Defines "code enforcement officer" as also including any person employed by the Department of Housing and Community Development who has enforcement authority for health, safety, and welfare requirements pursuant to the Employee Housing Act, State Housing Law, the Mobilehomes-Manufactured Housing Act, the Mobilehome Parks Act, and the Special Occupancy Parks Act. (Pen. Code, § 243(f)(11)(B).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 2228 establishes a framework through which code enforcement officers may receive state recognized certification, if they so choose. Setting standards, minimum qualifications, and ongoing educational requirements for local code enforcement officers who elect to attain the Certified Code Enforcement title helps local agencies identify, select, and train qualified public officers to enforce laws and codes necessary to help preserve safe, well-ordered communities."

2) **Argument in Support**: "According to the *California Association of Code Enforcement Officers*, "Assembly Bill 2228 creates official state recognition of Certified Code Enforcement Officers through adopting legislation to set the minimum education, training, and maintenance standards of a person to be eligible to claim the title of Certified Code Enforcement Officer (CCEO). The bill creates a voluntary program where any person may seek certification and professional registration through the existing California Association of Code Enforcement Officers (CACEO) organization, and public agencies may choose to include such registration and certification for their code enforcement officers of they choose. This recommendation proposes to delegate authority for CACEO to administer the day-to day program, much as the California State Bar administers the day-to-day standards for lawyers.

"Assembly Bill 2228 would provide a level of trust to the public and public agencies as to the competency of code enforcement officers; it will help qualify code enforcement officers as expert witnesses in court and administrative hearings; it will motivate code enforcement officers to study and learn important legal principles that protect both the public as well as their agency; it will motivate code enforcement officers to commit to ongoing professional learning through regular reclassification; it will enhance the professionalism of code enforcement; and it will help assure safety of code enforcement officers in the field."

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Code Enforcement Officers (Co-sponsor)
American Planning Association, California Chapter
Association of Los Angeles Deputy Sheriffs
Los Angeles Police Protective League
California University and College Police Chiefs Association
California Narcotics Officers Association

Opposition

None

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

Date of Hearing: April 5, 2016
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2278 (Linder) -- As Amended March 28, 2016
As Proposed to be Amended in Committee

SUMMARY: Clarifies procedures for notification of animal owners regarding hearings and payment of costs when an animal is seized or impounded. Specifically, **this bill**:

1) Requires a peace officer, humane society officer, or animal control officer to take possession of an animal that is not provided proper care and attention.

2) Specifies that when there are reasonable grounds to believe that very prompt action is required to protect the health or safety of the animal or the health or safety of others, the animal shall be seized immediately.

3) Requires a seizing agency to provide care and treatment for a seized animal until the animal is placed, returned to the owner, or euthanized.

4) Specifies that the owner or keeper of the animal is liable to the seizing agency for the entire cost of the seizure or impoundment of the animal, including costs associated with preparing and posting notices and sending statements of charges.

5) Requires the seizing agency to provide the owner of the animal with the opportunity for a postseizure hearing to determine the validity of the seizure.

6) Requires the seizing agency to post notice of postseizure hearing rights where the animal was seized, or personally deliver notice of postseizure hearing rights personally to the owner.

7) Specifies that in order to receive a post seizure hearing the owner must request the hearing within 10 days of notice.

8) Requires the seizing agency to present the owner with a statement listing all accrued charges, as provided, either at the postseizure hearing, or by personal service, first class mail, or electronic mail, as specified.

9) Requires the seizing agency to provide notice that the animal will be deemed abandoned if charges are not paid within 14 days of service of notice of charges, and that the payment of fees does not guarantee the release of the animal, but does allow the owner to retain an ownership interest in the animal.

10) Requires the impounding agency to continue to send notices of additional charges for care of the animals, at the discretion of the agency, not less than 14, and not to exceed 21 days from

the last statement.

11) Requires that if the animal was seized pursuant to a search warrant that the court that issued or adjudicated the warrant, give its express approval prior to the release of the animal to the owner.

12) Allows for a preseizure hearing when the need for immediate seizure of the animal is not present.

13) Provides the same requirements for notice of monetary charges and abandonment if the animal is seized after a preseizure hearing.

14) Requires the prosecutor's office to inform the seizing agency if they decide not to file criminal charges based on conduct related to the impoundment of the animal.

15) States that the animal will be released to the owner if a decision has been made not to file criminal charges and the animal has not otherwise been deemed abandoned.

EXISTING LAW:

1) States that ever person who willfully abandons any animal is guilty of a misdemeanor. (Penal Code § 597s.)

2) Provides that any peace officer, humane society officer, or animal control officer shall take possession of a stray or abandoned animal and shall provide care and treatment for the animal until the animal is deemed to be in suitable condition to be returned to the owner. (Penal Code § 597.1, subd. (a).)

3) Specifies that when the officer has reasonable grounds to believe that very prompt action is required to protect the health and safety of the stray or abandoned animal, or others the officer shall immediately seize the animal. (Penal Code § 597.1, subd. (a).)

4) States that the owner of a seized animal is liable for the full cost of caring and treating the animal, that these costs will be considered a lien on the animal, and that the animal will not be returned until the charges are paid, if the seizure is upheld. (Penal Code § 597.1, subd. (a) and (b).)

5) Requires any peace officer, humane society officer, or animal control officer to take all injured cats and dogs found without their owners in a public place to a veterinarian who ordinarily treats dogs and cats for a determination of whether the animal shall be immediately and humanely destroyed or shall be hospitalized under proper care and given emergency treatment. (Penal Code § 597.1, subd. (c)(1).)

6) Specifies that if the owner does not redeem the dog or cat that has been seized, as specified, within the locally prescribed waiting period, the veterinarian may personally perform euthanasia on the animal, or if the animal is treated and recovers from its injuries, the veterinarian may keep the animal for purposes of adoption, provided the responsible animal control agency has first been contacted and has refused to take possession of the animal.

(Penal Code § 597.1, subd. (c)(2).)

7) States that if the veterinarian provides medical treatment to a dog or cat that has been seized, as specified, the full costs the full cost of caring for and treating that animal shall constitute a lien on the animal and the animal shall not be returned to the owner until the charges are paid. (Penal Code § 597.1, subd. (c)(4).)

8) Provides that any peace officer, humane society officer, or any animal control officer may, with the approval of his or her immediate superior, humanely destroy any stray or abandoned animal in the field in any case where the animal is too severely injured to move or where a veterinarian is not available and it would be more humane to euthanize the animal. (Penal Code § 597.1, subd. (e).)

9) States that whenever an officer seizes an animal as specified, the officer shall, prior to the commencement of any criminal proceedings, provide the owner or keeper of the animal, if known or ascertainable after reasonable investigation, with the opportunity for a postseizure hearing to determine the validity of the seizure or impoundment, or both. (Penal Code § 597.1, subd. (f).)

10) Sets forth the notice requirements for animal-seizure hearings. (Penal Code § 597.1, subd. (f) and (g).)

11) Specifies that in order to receive a postseizure hearing, the owner or person authorized to keep the animal, or his or her agent, must request the hearing by signing and returning a declaration of ownership or right to keep the animal to the agency providing the notice within 10 days, including weekends and holidays, of the date of the notice. (Penal Code § 597.1, subd. (f)(1)(D).)

12) Requires the postseizure hearing be conducted within 48 hours of the request, excluding weekends and holidays. (Penal Code § 597.1, subd. (f)(2).)

13) States that failure of the owner or keeper, or of his or her agent, to request or to attend a scheduled hearing shall result in a forfeiture of any right to a postseizure hearing or right to challenge his or her liability for costs incurred. (Penal Code § 597.1, subd. (f)(3).)

14) Specifies that if it is determined in the postseizure hearing that the seizing officer did not have reasonable grounds seize the animal, the agency that seized the animal shall be responsible for the costs incurred for caring and treating the animal. (Penal Code § 597.1, subd. (f)(4).)

15) States that if it is determined the seizure was justified, the owner or keeper shall be personally liable to the seizing agency for the full cost of the seizure and care of the animal, and the costs for the seizure and care of the animal shall be a lien on the animal. (Penal Code § 597.1, subd. (f)(4).)

16) Provides that an animal determined to be a legally seized animal shall not be returned to its owner until the charges are paid and the owner demonstrates to the satisfaction of the seizing agency or the hearing officer that the owner can and will provide the necessary care for the

animal. (Penal Code § 597.1, subd. (f)(4).)

17) Specifies that a preseizure hearing shall be conducted within 48 hours, excluding weekends and holidays, after receipt of the request. (Penal Code § 597.1, subd. (g)(2).)

18) States that failure of the owner or keeper, or his or her agent, to request or to attend a scheduled preseizure hearing shall result in a forfeiture of any right to a preseizure hearing or right to challenge his or her liability for costs incurred pursuant to this section. (Penal Code § 597.1, subd. (g)(3).)

19) States that the hearing officer, after the preseizure hearing, may affirm or deny the owner's or keeper's right to custody of the animal and, if reasonable grounds are established, may order the seizure or impoundment of the animal for care and treatment. (Penal Code § 597.1, subd. (g)(4).)

20) Provides if the charges for the seizure, and any other permitted charges are not paid within 14 days of the seizure, or if the owner, within 14 days of notice of availability of the animal to be returned, fails to pay charges permitted under this section and take possession of the animal, the animal shall be deemed to have been abandoned and may be disposed of by the seizing agency. (Penal Code § 597.1, subd. (h).)

21) States that if the animal requires veterinary care and the humane society or public agency is not assured, within 14 days of the seizure of the animal, that the owner will provide the necessary care, the animal shall not be returned to its owner and shall be deemed to have been abandoned and may be disposed of by the seizing agency. (Penal Code § 597.1, subd. (i).)

22) Provides that a veterinarian may humanely destroy an impounded animal without regard to the prescribed holding period when it has been determined that the animal has incurred severe injuries or is incurably crippled. (Penal Code § 597.1, subd. (i).)

23) States that in the case of cats and dogs, prior to the final disposition of any criminal charges, the seizing agency or prosecuting attorney may file a petition in a criminal action requesting that the court issue an order forfeiting the animal to the city, county, or seizing agency. (Penal Code § 597.1, subd. (k)(1).)

24) Disallows the return of a seized animal to the owner until the seizing agency or hearing officer determines that the animal is physically fit or until the owner shows to the satisfaction of the hearing officer or seizing agency that the owner can and will provide necessary care. (Penal Code § 597.1, subd. (j).)

25) States that person convicted of a violation of this section by causing or permitting an act of cruelty, as specified, shall be liable to the impounding officer for all costs of impoundment from the time of seizure to the time of proper disposition. (Pen. Code, § 597, subd. (g).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "This bill is to clean up Penal Code 597.1, by clarifying the 14-day notice language and provide that all animals seized for alleged abuse are eligible for mandatory forfeiture after a court hearing. By making these changes we can help avoid any undue suffering to animals that are in shelters as well as avoid any unanticipated cost to the owner."

2) **Procedures for Seizing Animals:** An animal can be seized in several different ways. A peace officer, humane society officer, or animal control officer can seize a stray or abandoned animal if he or she has reasonable grounds to believe that prompt action is required to protect the health or safety of the animal or the health or safety of others. (Penal Code Section 597.1(a) and (b).) Authorities can also obtain a warrant upon a showing of probable cause, and then seize the animal pursuant to the warrant.

   There is also an option to seize an animal after a hearing if animal control observes unsuitable conditions, but these conditions do not rise to the level of exigent circumstances (i.e., the need for immediate seizure is not present). Animal control can conduct a hearing prior to seizure of the animal and before criminal proceedings for animal abuse or neglect commence. (Penal Code Section 597.1(g).) In this situation, the owner must produce the animal at the time of the hearing, unless before the hearing he or she allowed the agency to view the animal or unless the owner can provide verification that the animal was already humanely destroyed. This hearing is referred to as a preseizure hearing. (*Ibid.*) Depending on the findings made at the preseizure hearing, the animal can be seized and held at that point.

3) **Current Framework For Administrative Hearings In Animal Seizures:** Under existing law, peace officers, humane society officers, or animal control officers must take possession of the stray or abandoned animal when the officer has reasonable grounds to believe that very prompt action is required to protect the health or safety of the animal. Once the animal is seized, it is taken to a veterinarian, shelter, or clinic to be treated and housed. Notice must be posted, or mailed, to give any owner an opportunity for a post seizure hearing. The owner must request a post seizure hearing within 10 calendar days from the date of notice, or loses the opportunity for a hearing. The purpose of the hearing is to determine if the seizure or impoundment of the animal was valid. If the seizure is upheld the owner is responsible for the costs of care and treatment of the animal. Those costs are lien against the animal. If the owner fails to pay the costs of the seizure and animal care within 14 days of the seizure the animal shall be deemed abandoned and may be placed, or the seizing agency can make other arrangements for the animal.

   Current law does not provide clear guidelines for the seizing agency to provide notice to the owner of the animal regarding payment of costs and when an animal is deemed abandoned by the owner. This bill provides such guidelines.

4) **As Proposed to be Amended in Committee:**

a) Requires mandatory seizure of animals under specified circumstances involving animal neglect and safety. That mandatory language is consistent with existing law.

b) Specifies that a seized animal is deemed abandoned and may be disposed of by the seizing agency if the monetary charges for seizure are not paid within 14 days of service of the notice of charges. This amendment provides consistency with the notice requirements added by this bill.

c) Requires prosecutor's office to inform the seizing agency if they decide not to file criminal charges based on conduct related to the impoundment of the animal.

d) States that the animal will be released to the owner if a decision has been made not to file criminal charges and the animal has not otherwise been deemed abandoned.

5) **Argument in Support**: According to *The State Humane Association of California*, "AB 2278 will make major improvements to Penal Code Section 597.1. This is a section of code that animal shelters rely on to deal with animal cruelty and neglect and what transpires as a result of seizing animals found in those circumstances. However, in the course of executing their duties as proscribed in this statute, it has become more and more apparent that this section of code is both difficult to interpret and implement.

"The proposed changes are not meant to undermine or redirect the statute's original purpose. Rather they will clarify the rights and responsibilities of both owners and agencies when an animal is seized for abuse or neglect. This will help to avoid undue animal suffering, financial loss to the shelter, and unanticipated financial burden on the owner. Moreover, the proposed changes will ensure that all animals – not just cats and dogs – are subject to the mandatory forfeiture provisions. These improvements in the statute will enable animal shelters to do a better job of protecting abused animals and giving them a chance at a new life."

6) **Prior Legislation**:

a) SB 1500 (Lieu), Chapter 598, Statutes of 2012, allows pre-conviction forfeiture of an individual's seized animals in animal abuse and neglect cases.

b) AB 243 (Nava), of the 2009-10 Legislative Session, sought to establish a period prohibiting animal ownership after a misdemeanor or felony conviction of animal abuse. AB 243 was vetoed.

c) SB 318 (Calderon), Chapter 302, Statutes of 2009, provided for the forfeiture of any property interest that was either acquired through the commission of dogfighting, or used to promote, further or facilitate dogfighting.

REGISTERED SUPPORT / OPPOSITION:

Support

State Humane Association of California (Sponsor)
Beagle Freedom Project

California Police Chiefs Association
Peace Officers Research Association of California
Opposition

None

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

Amended Mock-up for 2015-2016 AB-2278 (Linder (A))

*********Amendments are in *BOLD*********

Mock-up based on Version Number 98 - Amended Assembly 3/28/16
Submitted by: David Billingsley, Assembly Public Safety Committee

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 597.1 of the Penal Code is amended to read:

597.1. (a) (1) Each owner, driver, or keeper of any animal who permits the animal to be in any building, enclosure, lane, street, square, or lot of any city, county, city and county, or judicial district without proper care and attention is guilty of a misdemeanor. Any peace officer, humane officer, or animal control officer shall take possession of the stray or abandoned animal until the animal is deemed to be in suitable condition to be returned to the owner. When the officer has reasonable grounds to believe that very prompt action is required to protect the health or safety of the animal or the health or safety of others, the officer shall immediately seize the animal and comply with subdivision (f). In all other cases, the officer shall comply with the provisions of subdivision (g). If the animal is seized, the seizing organization or agency shall provide care and treatment for the animal until the animal is placed, returned to the owner, or euthanized. The full cost of caring for and treating any animal properly seized under this subdivision or pursuant to a search warrant shall constitute a lien on the animal and the animal shall not be returned to its owner until the charges are paid, if the seizure is upheld pursuant to this section.

(2) Notwithstanding any other law, if an animal control officer or humane officer, when necessary to protect the health and safety of a wild, stray, or abandoned animal or the health and safety of others, seeks to administer a tranquilizer that contains a controlled substance, as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, to gain control of that animal, he or she may possess and administer that tranquilizer with direct or indirect supervision as determined by a licensed veterinarian, provided that the officer has met each of the following requirements:

(A) Has received training in the administration of tranquilizers from a licensed veterinarian. The training shall be approved by the Veterinary Medical Board.

(B) Has successfully completed the firearms component of a course relating to the exercise of police powers, as set forth in Section 832.

(C) Is authorized by his or her agency or organization to possess and administer the tranquilizer in accordance with a policy established by the agency or organization and approved by the veterinarian who obtained the controlled substance.

(D) Has successfully completed the euthanasia training set forth in Section 2039 of Title 16 of the California Code of Regulations.

(E) Has completed a state and federal fingerprinting background check and does not have any drug- or alcohol-related convictions.

(b) Each sick, disabled, infirm, or crippled animal, except a dog or cat, that is abandoned in any city, county, city and county, or judicial district may be killed by the officer if, after a reasonable search, no owner of the animal can be found. It shall be the duty of all peace officers, humane officers, and animal control officers to cause the animal to be killed or rehabilitated and placed in a suitable home on information that the animal is stray or abandoned. The officer may likewise take charge of any animal, including a dog or cat, that by reason of lameness, sickness, feebleness, or neglect, is unfit for the labor it is performing, or that in any other manner is being cruelly treated, and provide care and treatment for the animal until it is deemed to be in a suitable condition to be returned to the owner. When the officer has reasonable grounds to believe that very prompt action is required to protect the health or safety of an animal or the health or safety of others, the officer shall immediately seize the animal and comply with subdivision (f). In all other cases, the officer shall comply with subdivision (g). The full cost of caring for and treating any animal properly seized under this subdivision or pursuant to a search warrant shall constitute a lien on the animal and the animal shall not be returned to its owner until the charges are paid.

(c) (1) Any peace officer, humane officer, or animal control officer shall convey all injured cats and dogs found without their owners in a public place directly to a veterinarian known by the officer to be a veterinarian who ordinarily treats dogs and cats for a determination of whether the animal shall be immediately and humanely destroyed or shall be hospitalized under proper care and given emergency treatment.

(2) If the owner does not redeem the animal within the locally prescribed waiting period, the veterinarian may personally perform euthanasia on the animal. If the animal is treated and recovers from its injuries, the veterinarian may keep the animal for purposes of adoption, provided the responsible animal control agency has first been contacted and has refused to take possession of the animal.

(3) Whenever any animal is transferred to a veterinarian in a clinic, such as an emergency clinic that is not in continuous operation, the veterinarian may, in turn, transfer the animal to an appropriate facility.

(4) If the veterinarian determines that the animal shall be hospitalized under proper care and given emergency treatment, the costs of any services that are provided pending the owner's inquiry to the responsible agency, department, or society shall be paid from the dog license fees, fines, and fees for impounding dogs in the city, county, or city and county in which the animal

was licensed or, if the animal is unlicensed, shall be paid by the jurisdiction in which the animal was found, subject to the provision that this cost be repaid by the animal's owner. The full cost of caring for and treating any animal seized under this subdivision shall constitute a lien on the animal and the animal shall not be returned to the owner until the charges are paid. No veterinarian shall be criminally or civilly liable for any decision that he or she makes or for services that he or she provides pursuant to this subdivision.

(d) An animal control agency that takes possession of an animal pursuant to subdivision (c) shall keep records of the whereabouts of the animal from the time of possession to the end of the animal's impoundment, and those records shall be available for inspection by the public upon request for three years after the date the animal's impoundment ended.

(e) Notwithstanding any other provision of this section, any peace officer, humane officer, or any animal control officer may, with the approval of his or her immediate superior, humanely destroy any stray or abandoned animal in the field in any case where the animal is too severely injured to move or where a veterinarian is not available and it would be more humane to euthanize the animal.

(f) Whenever an officer authorized under this section seizes or impounds an animal based on a reasonable belief that prompt action is required to protect the health or safety of the animal or the health or safety of others, the officer shall, prior to the commencement of any criminal proceedings authorized by this section, provide the owner or keeper of the animal, if known or ascertainable after reasonable investigation, with the opportunity for a postseizure hearing to determine the validity of the seizure or impoundment, or both.

(1) The agency shall cause a notice to be affixed to a conspicuous place where the animal was situated or personally deliver a notice of the seizure or impoundment, or both, to the owner or keeper within 48 hours, excluding weekends and holidays. The notice shall include all of the following:

(A) The name, business address, and telephone number of the officer providing the notice.

(B) A description of the animal seized, including any identification upon the animal.

(C) The authority and purpose for the seizure or impoundment, including the time, place, and circumstances under which the animal was seized.

(D) A statement that, in order to receive a postseizure hearing, the owner or person authorized to keep the animal, or his or her agent, shall request the hearing by signing and returning an enclosed declaration of ownership or right to keep the animal to the agency providing the notice within 10 days, including weekends and holidays, of the date of the notice. The declaration may be returned by personal delivery or mail.

(E) A statement that the full cost of caring for and treating any animal properly seized under this section is a lien on the animal and that the animal shall not be returned to the owner until the

charges are paid, and that failure to request or to attend a scheduled hearing shall result in liability for this cost.

(2) The postseizure hearing shall be conducted within 48 hours of the request, excluding weekends and holidays. The seizing agency may authorize its own officer or employee to conduct the hearing if the hearing officer is not the same person who directed the seizure or impoundment of the animal and is not junior in rank to that person. The agency may utilize the services of a hearing officer from outside the agency for the purposes of complying with this section.

(3) Failure of the owner or keeper, or of his or her agent, to request or to attend a scheduled hearing shall result in a forfeiture of any right to a postseizure hearing or right to challenge his or her liability for costs incurred.

(4) The agency, department, or society employing the person who directed the seizure shall be responsible for the costs incurred for caring and treating the animal, if it is determined in the postseizure hearing that the seizing officer did not have reasonable grounds to believe very prompt action, including seizure of the animal, was required to protect the health or safety of the animal or the health or safety of others. If it is determined the seizure was justified, the owner or keeper shall be personally liable to the seizing agency for the full cost of the seizure and care of the animal. The charges for the seizure and care of the animal shall be a lien on the animal. The animal shall not be returned to its owner until the charges are paid and the owner demonstrates to the satisfaction of the seizing agency or the hearing officer that the owner can and will provide the necessary care for the animal.

(g) Where the need for immediate seizure is not present and prior to the commencement of any criminal proceedings authorized by this section, the agency shall provide the owner or keeper of the animal, if known or ascertainable after reasonable investigation, with the opportunity for a hearing prior to any seizure or impoundment of the animal. The owner shall produce the animal at the time of the hearing unless, prior to the hearing, the owner has made arrangements with the agency to view the animal upon request of the agency, or unless the owner can provide verification that the animal was humanely destroyed. Any person who willfully fails to produce the animal or provide the verification is guilty of an infraction, punishable by a fine of not less than two hundred fifty dollars ($250) nor more than one thousand dollars ($1,000).

(1) The agency shall cause a notice to be affixed to a conspicuous place where the animal was situated or personally deliver a notice stating the grounds for believing the animal should be seized under subdivision (a) or (b). The notice shall include all of the following:

(A) The name, business address, and telephone number of the officer providing the notice.

(B) A description of the animal to be seized, including any identification upon the animal.

(C) The authority and purpose for the possible seizure or impoundment.

(D) A statement that, in order to receive a hearing prior to any seizure, the owner or person authorized to keep the animal, or his or her agent, shall request the hearing by signing and returning the enclosed declaration of ownership or right to keep the animal to the officer providing the notice within two days, excluding weekends and holidays, of the date of the notice.

(E) A statement that the cost of caring for and treating any animal properly seized under this section is a lien on the animal, that any animal seized shall not be returned to the owner until the charges are paid, and that failure to request or to attend a scheduled hearing shall result in a conclusive determination that the animal may properly be seized and that the owner shall be liable for the charges.

(2) The preseizure hearing shall be conducted within 48 hours, excluding weekends and holidays, after receipt of the request. The seizing agency may authorize its own officer or employee to conduct the hearing if the hearing officer is not the same person who requests the seizure or impoundment of the animal and is not junior in rank to that person. The agency may utilize the services of a hearing officer from outside the agency for the purposes of complying with this section.

(3) Failure of the owner or keeper, or his or her agent, to request or to attend a scheduled hearing shall result in a forfeiture of any right to a preseizure hearing or right to challenge his or her liability for costs incurred pursuant to this section.

(4) The hearing officer, after the hearing, may affirm or deny the owner's or keeper's right to custody of the animal and, if reasonable grounds are established, may order the seizure or impoundment of the animal for care and treatment.

(h) (1) If any animal is properly seized or impounded, or both seized and impounded, under this section or pursuant to a search warrant, the owner or keeper shall be personally liable to the seizing agency or impounding agency, or both the seizing agency and the impounding agency, for all cost of the seizure or impoundment, or both the seizure and impoundment, and care of the animal, including all costs associated with the preparation and posting of notices and sending of statements of charges in accordance with this section.

(2) An animal lawfully seized pursuant to this section or pursuant to a search warrant shall be deemed to be abandoned and may be disposed of by the seizing agency if the charges for the seizure or impoundment and any other charges permitted under this section are not paid within 14 days of ***service of*** the ***notice of charges*** ~~seizure or impoundment~~, or if the owner, within 14 days of notice of availability of the animal to be returned, fails to pay charges permitted under this section and take possession of the animal. An animal properly seized under this section or pursuant to a search warrant shall not be returned to its owner until the owner can demonstrate to the satisfaction of the seizing agency or hearing officer that the owner can and will provide the necessary care for the animal. If the animal was seized pursuant to a search warrant, express approval of the court that issued the warrant or adjudicated the matter shall be obtained prior to the release of the animal.

(3) Notice of charges for the seizure, impoundment, and care of the animal pursuant to this section shall be executed as follows:

(A) (i) If the animal is seized or impounded pursuant to subdivision (f), a statement listing all charges that have accrued from the time of an animal's seizure or impoundment shall be presented to the owner or keeper at the time of the postseizure hearing. If no postseizure hearing is held, the statement of charges shall be presented to the owner or keeper via personal service, first-class mail, or electronic mail within two calendar days of the expiration of the 10-day period during which an owner or keeper may request a hearing specified in subparagraph (D) of paragraph (1) of subdivision (f).

(ii) If the animal is seized or impounded following the issuance of a preseizure notice pursuant to subdivision (g), a statement listing all charges shall be presented to the owner or keeper via personal service, first-class mail, or electronic mail no later than five calendar days after the date the animal is seized or impounded.

(iii) If the animal is seized pursuant to a search warrant, a statement listing all charges shall be presented to the owner or keeper via personal service, first-class mail, or electronic mail no later than five calendar days after the date the animal is seized or impounded.

(B) If the charges are paid and the animal remains impounded, the impounding agency shall continue to present statements of charges to the owner or keeper on an ongoing basis via personal service, first-class mail, or electronic mail. The statements shall list all new charges that have accrued during the time of impoundment since the last statement was sent or delivered. The time period for delivery or mailing the subsequent statements shall be at ***least 14 days from the date of the last statement,*** ~~the discretion of the impounding agency,~~ but shall not exceed 21 days from the date the last statement was presented.

(C) The statement of charges specified in subparagraph (A) and any subsequent statements specified in subparagraph (B) shall include a notice that the animal will be deemed abandoned if charges are not paid within 14 days of service, and that payment of fees does not guarantee the release of the animal, but does allow the owner or keeper to retain an ownership interest in the animal.

(i) ~~If the animal requires veterinary care and the humane society or public agency is not assured, within 14 days of the seizure of the animal, that the owner will provide the necessary care, the animal shall not be returned to its owner and shall be deemed to have been abandoned and may be disposed of by the seizing agency.~~ A veterinarian may humanely destroy an impounded animal without regard to the prescribed holding period when it has been determined that the animal has incurred severe injuries or is incurably crippled. A veterinarian also may immediately humanely destroy an impounded animal afflicted with a serious contagious disease unless the owner or his or her agent immediately authorizes treatment of the animal by a veterinarian at the expense of the owner or agent.

(j) An animal properly seized under this section or pursuant to a search warrant shall not be returned to its owner until the owner can demonstrate to the satisfaction of the seizing agency or hearing officer that the owner can and will provide the necessary care for the animal. If the animal was seized pursuant to a search warrant, express approval of the court that issued the warrant or adjudicated the matter shall be obtained prior to the release of the animal.

(k) (1) Prior to the final disposition of any criminal charges, the seizing agency or prosecuting attorney may file a petition in a criminal action requesting that, prior to that final disposition, the court issue an order forfeiting the animal to the city, county, or seizing agency. The petitioner shall serve a true copy of the petition upon the defendant and the prosecuting attorney.

(2) Upon receipt of the petition, the court shall set a hearing on the petition. The hearing shall be conducted within 14 days after the filing of the petition, or as soon as practicable.

(3) The petitioner shall have the burden of establishing beyond a reasonable doubt that, even in the event of an acquittal of the criminal charges, the owner will not legally be permitted to retain the animal in question. If the court finds that the petitioner has met its burden, the court shall order the immediate forfeiture of the animal as sought by the petition.

(4) This section does not authorize a seizing agency or prosecuting attorney to file a petition to determine an owner's ability to legally retain an animal pursuant to paragraph (3) of subdivision (l) if a petition has previously been filed pursuant to this subdivision.

(l) (1) Upon the conviction of a person charged with a violation of this section, or Section 597 or 597a, all animals lawfully seized and impounded with respect to the violation shall be adjudged by the court to be forfeited and shall thereupon be transferred to the impounding officer or appropriate public entity for proper adoption or other disposition. A person convicted of a violation of this section shall be personally liable to the seizing agency for all costs of impoundment from the time of seizure to the time of proper disposition. Upon conviction, the court shall order the convicted person to make payment to the appropriate public entity for the costs incurred in the housing, care, feeding, and treatment of the seized or impounded animals. Each person convicted in connection with a particular animal may be held jointly and severally liable for restitution for that particular animal. The payment shall be in addition to any other fine or sentence ordered by the court.

(2) The court may also order, as a condition of probation, that the convicted person be prohibited from owning, possessing, caring for, or residing with, animals of any kind, and require the convicted person to immediately deliver all animals in his or her possession to a designated public entity for adoption or other lawful disposition or provide proof to the court that the person no longer has possession, care, or control of any animals. In the event of the acquittal or final discharge without conviction of the person charged, if the animal is still impounded, the animal has not been previously deemed abandoned pursuant to subdivision (h), the court has not ordered that the animal be forfeited pursuant to subdivision (k), the court shall, on demand, direct the release of seized or impounded animals to the defendant upon a showing of proof of ownership.

(3) Any questions regarding ownership shall be determined in a separate hearing by the court where the criminal case was finally adjudicated and the court shall hear testimony from any persons who may assist the court in determining ownership of the animal. If the owner is determined to be unknown or the owner is prohibited or unable to retain possession of the animals for any reason, the court shall order the animals to be released to the appropriate public entity for adoption or other lawful disposition. This section is not intended to cause the release of any animal, bird, reptile, amphibian, or fish seized or impounded pursuant to any other statute, ordinance, or municipal regulation. This section shall not prohibit the seizure or impoundment of animals as evidence as provided for under any other provision of law.

(m) If the prosecutor's office with jurisdiction decides not to file criminal charges based on conduct related to the seizure or impoundment of the animal, the prosecutor's office shall inform the seizing or impounding agency of that fact promptly. If the animal is still impounded, and the animal has not been previously deemed abandoned pursuant to subdivision (h), the seizing or impounding agency shall release the seized or impounded animal(s) to the owner upon a showing of proof of ownership.

~~(m)~~ ***(n)*** It shall be the duty of all peace officers, humane officers, and animal control officers to use all currently acceptable methods of identification, both electronic and otherwise, to determine the lawful owner or caretaker of any seized or impounded animal. It shall also be their duty to make reasonable efforts to notify the owner or caretaker of the whereabouts of the animal and any procedures available for the lawful recovery of the animal and, upon the owner's and caretaker's initiation of recovery procedures, retain custody of the animal for a reasonable period of time to allow for completion of the recovery process. Efforts to locate or contact the owner or caretaker and communications with persons claiming to be the owner or caretaker shall be recorded and maintained and be made available for public inspection.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

Date of Hearing: April 5, 2016
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2295 (Baker) – As Amended March 15, 2016

SUMMARY: Conforms several restitution provisions to the constitutional requirement that a victim is entitled to full restitution. Specifically, **this bill**:

1) Removes the ability of a judge to order less than full restitution to the victim based on the defendant's ability to pay under the aggravated white collar crime enhancement.

2) Removes the ability of a judge to order less than full restitution to the victim based on the defendant's ability to pay under the "seize and freeze" provisions for aggravated elder or dependent adult financial abuse.

3) Removes court authority to order less than full restitution when it finds compelling and extraordinary reasons for doing so, as currently provided by the restitution statute.

EXISTING LAW:

1) Requires the court to order the defendant to pay victim restitution in every case in which a victim has suffered an economic loss as a result of the defendant's conduct. (Pen. Code, § 1202, subd. (f).)

2) Requires the court to order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record. (Pen. Code, § 1202.4, subd. (g).)

3) Specifies that inability to pay is not a compelling and extraordinary reason not to impose victim restitution. (Pen. Code, § 1202.4, subd. (g).)

4) States that inability to pay is not a ground for consideration at all in calculating victim restitution. (Pen. Code, § 1202.4, subd. (g).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 2295 would amend the Penal Code to remove any ambiguity about a victim's right to full restitution. Specifically, AB 2295 would correct the Penal Code to conform to the California Constitution as amended by the passage of Marsy's Law. In doing this, this bill will resolve any conflict in California Law regarding victim's right to restitution."

2) **Constitutionally Protected Right to Victim Restitution**: The right of a victim to restitution from the person convicted of a crime from which the victim suffers a loss as result of the criminal activity became a constitutional right when adopted by vote of the people in June 1982 as part of Proposition 8. Proposition 8 added article I, section 28, subdivision (b), to the California Constitution, and provided:

"It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer.

"Restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary. The Legislature shall adopt provisions to implement this section during the calendar year following adoption of this section."

The Proposition was not self-executing, but rather directed the Legislature to adopt implementing legislation. (*People v. Vega-Hernández* (1986) 179 Cal.App.3d 1084.) In response, the Legislature enacted Penal Code sections 1202.4 and 1203.04 (repealed section related to restitution as condition of probation). (*People v. Ortiz* (1997) 53 Cal.App.4th 791, 795, fn. 3.)

The constitutional provisions regarding restitution were amended by the voters again in 2008, when they approved Proposition 9, the Victims' Bill of Rights Act of 2008, also known as Marsy's Law. The amendments, among other things, make clear that a victim is entitled to restitution, expanded the definition of a victim to include a representative of a deceased victim, and gave that representative the ability to enforce a victim's right. (See *People v. Runyan* (2012) 54 Cal.4th 849, 858-859.)

3) ***People v. Pierce* (2015) 234 Cal. App. 4th 1334**: *People v. Pierce*, *supra*, was an appeal from a restitution order after the defendant pled to a home invasion robbery and admitted he acted in concert with two other men. One his codefendants had left the scene in the victim's truck and crashed it into a telephone pole, damaging the pole and another house. (*Id.* at p. 1336.) One of the claims raised by the defendant was that the trial court erred in imposing restitution for damages caused by a codefendant because the prosecutor explicitly waived the claim at the initial sentencing hearing. The appellate court rejected the argument. (*Id.* at p. 1337.) The court held that the prosecutor cannot waive a victim's right to restitution because it is constitutionally mandated. (*Id.* at p. 1338.) Citing Penal Code section 1202.4, subdivision (f), the court noted that the trial court cannot generally stray from the mandate of ordering full restitution. (*Ibid.*)

In dicta, the court observed that the language of Penal Code section 1202.4, subdivision (f) allows less than full restitution where the trial court finds "compelling and extraordinary reasons." But the court questioned whether this language remained valid after the passage of Proposition 9. The court noted that before the passage of Proposition 9, the constitutional provision regarding the right to restitution said, "restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary." Proposition 9 amended that provision to delete the language "unless compelling and extraordinary reasons exist to the contrary." On this basis, the appellate court

encouraged the Legislature to conform the language of Penal Code section 1202.4. (*People v. Pierce*, *supra*, 234 Cal.App.4th 1334, 1338, fn. 2.)

This bill deletes language in several statutes which authorizes the court to order less than full restitution based either on the defendant's ability to pay or for compelling and extraordinary reasons because they conflict with the constitutional right of a victim to full restitution.

4) **Argument in Support**: According to *Crime Victims United of California*, the sponsor of this bill, "In 2008, California voters passed Proposition 9, also known as Marsy's Law, which codified that victims of crimes such as assault, abuse, homicide, robbery, human trafficking, and other violence offenses have enumerated rights. One of these rights was the unconditional right to receive restitution from the offender for the loss suffered by the victim. Before Marsy's Law, the California Penal Code permitted courts to provide less than full restitution when there were 'compelling and extraordinary reasons' to do so. Marsy's law mandates that 'restitution shall be ordered from the convicted wrongdoer in every case regardless of the disposition of the sentence imposed, in which a crime victim suffers a loss (C.A. Const. art. I § 28, cl. 13b).'"

"Various sections of the California Penal Code, including Sections 1202.4(f) and (g) permit trial courts to provide less than full restitution to victims. California's Penal Code conflicts with Marsy's Law in the California Constitution as amended by voters in Proposition 9. A recent appellate court noted the inconsistency in People v. Pierce, published on March 6, 2015, stating 'Though section 1202.4(f) and (g) permits a trial court to provide less than full restitution where it provides "compelling and extraordinary reasons" for doing so, we question whether this discretion statutorily afforded the court is constitutionally sound in light of the amendment of Article 1, Section 28, subdivision (b) of the California Constitution effectuated by the voter's approval of Proposition 9, the Victim's Bill of Rights Act of 2008: Marsy's Law (Eff. Nov. 5, 2008).'

AB 2295 would amend the Penal Code to remove any ambiguity about a victim's right to full restitution. Specifically, AB 2295 would correct the Penal Code to conform to the California Constitution as amended by the passage of Marsy's Law."

5) **Argument in Opposition**: According to the *California Attorneys for Criminal Justice*, "In eliminating the discretion of the court to not impose an order of restitution in appropriate circumstances, we will be denying the ability of the court to make a reasoned decision on a case-by-case basis. It is essential that our judges retain discretion to allow for fair and just decisions pertaining to the imposition of an order for restitution, and sentencing in general. There can be no question that there are certain circumstances upon which an order of restitution would not be appropriate; thus, it is essential that our courts retain discretion to make such a finding. Maintaining this discretion will also further support the implementation of the Separation of Powers doctrine which is so essential to the fair administration of justice in our court system."

6) **Related Legislation**:

   a) AB 2477 (Patterson) overturns case law holding that a court lacks jurisdiction to modify a restitution order after the defendant's probation expires, thereby extending jurisdiction for restitution indefinitely. AB 2477 failed passage in this Committee and has been granted reconsideration.

   b) SB 1054 (Pavley) prohibits the Department of Corrections and Rehabilitation or a county from referring an outstanding restitution order to the Franchise Tax Board if a county agency has been designated by the board of supervisors to collect restitution. SB 1054 is pending in the Senate Public Safety Committee.

7) **Prior Legislation**: Proposition 9, of the November 2008 general election, Marsy's Law, significantly expands the rights of crime victims in California by giving them specified constitutional rights, including expanded right to restitution.

REGISTERED SUPPORT / OPPOSITION:

Support

Crime Victims United of California (Sponsor)
California Catholic Conference
California District Attorneys Association
California Police Chiefs Association
Contra Costa County District Attorney
Stand for Families Free of Violence

Opposition

California Attorneys for Criminal Justice

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744

Date of Hearing: April 5, 2016
Consultant: Matt Dean

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2387 (Mullin) – As Introduced February 18, 2016
As Proposed to be Amended in Committee

SUMMARY: Punishes the knowing distribution, selling or installation of any counterfeit or nonfunctional air bag, as defined, and the manufacture or importation of any counterfeit, nonfunctional or unsafe air bag, as defined, as a misdemeanor. Specifically, **this bill**:

1) Adds to the list of prohibited air bags any counterfeit air bag or nonfunctional air bag, as defined.

2) Defines "counterfeit air bag" as an air bag that does any of the following:

   a) displays a mark identical or similar to the genuine mark of a motor vehicle manufacturer without authorization from that manufacturer;

   b) any air bag falsely represented to be an airbag of any true dealer, manufacturer or producer of the air bag; or

   c) a counterfeit or repaired airbag cover, installed in a motor vehicle to mislead the owner or operator of the motor vehicle into believing that a functional airbag has been installed.

3) Defines "nonfunctional air bag" as any of the following:

   a) An air bag that is no longer in proper working order,

   b) An airbag that was previously deployed or damaged,

   c) An airbag that has an electric fault that is detected by the vehicle airbag diagnostic system after the installation procedure is completed,

   d) An airbag that includes a part or object, including, but not limited to, a counterfeit or repaired airbag cover, installed in a motor vehicle to mislead the owner or operator of the motor vehicle into believing that a functional airbag has been installed, or

   e) An airbag that was subject to factory recall.

4) States that any person who manufactures, imports, installs, reinstalls, sells, or offers for sale any device with the intent that the device place an airbag in any motor vehicle if the person knows or reasonably should know that the device is a counterfeit air bag or a nonfunctional air bag, or does not meet federal safety requirements as provided in Section 571.208 of Title 49 of the Code of Federal Regulations is guilty of a misdemeanor punishable by a fine of up

to five thousand dollars ($5,000) or by imprisonment in a county jail for up to one year, or by both the fine and imprisonment.

5) Grants safe harbor to any installer who installs a nonfunctional air bag, who after discovering the nonfunctional air bag has been installed, either replaces the nonfunctional air bag with a functional air bag or notifies the purchaser or other recipient of the vehicle that the air bag is not functional.

EXISTING LAW:

1) Prohibits installation, reinstallation, rewiring, tampering with, altering or modifying for compensation a vehicle's computer or supplemental restraint system, or the system's performance indicators, so that it falsely indicates the supplemental restraint system is in proper working order. (Veh. Code, § 27317.)

2) Prohibits knowingly distributing or selling a previously deployed air bag or previously deployed air bag component that will no longer meet the original equipment manufacturing form or function for proper operation. (Veh. Code, § 27317.)

3) States that improper installation or installation of previously deployed air bag components which no longer meet the original equipment manufacturing form or function for proper operation is a misdemeanor. (Veh. Code, § 27317.)

4) Punishes anyone who knowingly sells or knowingly holds for sale any counterfeit trademark registered with the Secretary of State or the Principal Register of the United States Patent and Trademark Office, as provided, according to the total value of the goods or products. (Pen. Code, § 350.)

5) Prohibits anyone from willfully and falsely representing their goods or products as being the products of a true dealer, manufacturer or producer of those goods or products. (Pen. Code, § 351a.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 2387 is a consumer protection measure. It strengthens existing laws aimed at deterring the fraudulent distribution and installation of counterfeit airbags by more clearly defining key terms and increasing the penalty for knowingly exposing the public to this potentially deadly hazard."

2) **Background**: AB 1854 (Brownley), Chapter 97, Statutes of 2012, states in the analysis "Federal law requires car makers in the United States to install both driver- and front passenger-side airbags because they have been shown to help prevent injuries during a crash. In some areas of the state, however, law enforcement discovered that some repair shops were installing or reinstalling previously deployed airbag systems in their entirety, an act that frequently resulted in fatal or near fatal injuries when the airbags failed to function properly in a crash. To address this problem, the Legislature passed AB 1471 (Havice), [Chapter 449, Statutes of] 1999, which made it a crime to knowingly install or reinstall, for compensation,

any previously deployed airbag that is part of an inflatable restraint system.

"Proponents of this bill report that in order to get around this existing law, some unscrupulous salvage vehicle rebuilders are now no longer installing an entire previously deployed airbag system. Instead they are using individual components from previously deployed airbag systems and rewiring the onboard computer so that it appears as though the vehicle's airbag system is functioning properly when it in fact it is not. The author notes that judges have rebuffed the efforts of prosecutors to take legal action against such fraudulent activity because of the lack of a legal prohibition against such actions."

In sum, AB 1854 (Brownley) prohibits knowingly installing any air bag or air bag component that will no longer meet the original equipment manufacturing form or function for proper operation. This bill added the knowing installation or sale of any nonfunctional air bag or counterfeit air bag to the list of air bags which are prohibited to be installed or sold.

3) **Counterfeit Air Bags**: The National Highway Traffic Safety Administration (NHTSA) has warned that counterfeit air bag systems may pose public safety issues. As of yet there have been no injuries or deaths reported from counterfeit air bags, but testing by the NHTSA has demonstrated that counterfeit air bags frequently malfunction or fail altogether. < http://www.nhtsa.gov/About+NHTSA/Press+Releases/2012/Safety+Advisory:+NHTSA+Alerting+Consumers+to+Dangers+of+Counterfeit+Air+Bags>. Currently, selling counterfeit goods bearing a registered mark is already prohibited by Penal Code Sections 350. The punishment for selling such counterfeit goods includes imprisonment in county jail ranging from not more than a year to three years, fines ranging from $10,000 to $500,000, or both. Selling a single counterfeit air bag would be punishable by a fine of not more than ten thousand dollars ($10,000), or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. Goods that do not bear a registered mark, which are falsely represented as genuine manufacturer or dealer goods, are prohibited under Penal Code Section 351a. A defendant who violates this section is guilty of a misdemeanor and punishable by a fine of not less than one hundred dollars ($100) or more than six hundred dollars ($600), or by imprisonment in the county jail for not less than 20 or more than 90 days, or both. Under either of these Code Sections, counterfeit air bags are already prohibited. This bill increases the potential penalties for selling or installing counterfeit air bags.

4) **Replacement Parts**: Honda's current supplemental restraint system repair manual directs repairmen and repairwomen to only replace the air bag and applicable sensors on the side where the air bag deployed –not the entire air bag system for the vehicle. However, the language of this bill is unclear if Honda or other auto manufacturers or dealers will change their standards for replacing air bags and their components when a vehicle has been in a collision, whether those standards would compel further air bag and air bag component replacement in order for installers to avoid criminal liability under this Section.

5) **Criminal Penalty Increases**: Over the last few years, Governor Brown has vetoed bills that create new crimes or particularize otherwise prohibited conduct. This bill would do both –by expanding the definition of a crime and by particularizing the counterfeiting of air bags specifically. Governor Brown said, in a blanket veto message sent October 3, 2015 which returned nine bills, "Each of these bills creates a new crime – usually by finding a novel way to characterize and criminalize conduct that is already proscribed. This multiplication and

particularization of criminal behavior creates increasing complexity without commensurate benefit.

"Over the last several decades, California's criminal code has grown to more than 5,000 separate provisions, covering almost every conceivable form of human misbehavior. During the same period, our jail and prison populations have exploded.

"Before we keep going down this road, I think we should pause and reflect on how our system of criminal justice could be made more human, more just and more cost-effective."

6) **Description of Amendments**: The amendments to this bill reduce the penalties for violations of this section from felonies to misdemeanors, keeping the penalties for violation of this section the same as they are under existing law, while adding counterfeit and nonfunctional air bags to the list of prohibited air bags into the Code Section as it currently exists. The bill also prohibits the manufacture and importation of nonfunctional, counterfeit or otherwise unsafe air bags, as defined in the Federal Regulations on airbags, to the list of offenses in this Section.

7) **Argument in Support**: According to *Honda North America, Inc.*, "Airbags are an essential component of modern vehicle safety systems, with several installed throughout each vehicle cabin as required by federal law. In the milliseconds after a collision, vehicle sensors measure critical information such as the size and position of the passenger, as well as the point and force of the impact. The vehicle then deploys each airbag in a specific order and with a precise amount of force to best protect the occupants. This level of precision requires each component to work as it was designed for the specific make, model and year of the vehicle for which it was designed. We encourage you to visit our website to see video evidence of just how deadly the difference in one airbag inflating seven one-hundredths of a second early or late can be.

"In 2010, federal authorities made Honda aware of a growing problem with cheap and ineffective counterfeit airbags entering the U.S. stream of commerce from China. While those airbags looked authentic from the outside, testing by the federal authorities, Honda and independent third parties confirmed that the counterfeiters were unable to replicate the technology required to protect consumers in the event of a collision. Because of the cost and precision involved in replicating our technology, many counterfeiters did not even bother to try. Instead they chose to fill airbags with sawdust, newspaper, paper towels, styrofoam or other items that were never intended to provide vehicle occupants with protection during a crash. These counterfeit airbags are then advertised as new and sold over the internet in an attempt to make a profit by defrauding consumers at the expense of public safety.

"This problem is so widespread that on October 10, 2012 the National Highway Traffic Safety Administration (NHTSA) issued a consumer advisory alerting vehicle owners and repair professionals about the danger. This advisory shows that this is a problem that impacts not just Honda vehicles, but nearly every make and model vehicle on the road and is putting thousands of motorists at risk for serious injury or even death.

"Since discovering this problem, and because of the inherent danger these products pose to our customers, Honda has made combating these products a priority. We have launched a website www.airbagaware.com filled with news articles and videos in order to raise public

awareness about this problem among consumers, repair professionals and policy makers. We have also worked closely with federal authorities in Homeland Security, Customs and Border Protection and the FBI to identify counterfeit airbags and prosecute those responsible when possible. Over the past few years, several thousand counterfeit airbags have been confiscated in raids across the country. To date, Honda has worked with federal authorities to secure the conviction of 16 people for trafficking counterfeit airbags including one California resident. Unfortunately this is just the tip of the iceberg.

"Despite their best efforts, federal agents have limited authority to combat this problem. Federal authorities are only able to prosecute counterfeiters when they violate federal trademark law. This occurs when a registered trademark or a mark substantially similar to a registered trademark is used on a fake airbag without approval. Unfortunately the majority of legitimate airbags, including passenger and side-curtain airbags do not contain trademarks and therefore fakes cannot be prosecuted under trademark law. Even when these fake airbags are discovered by authorities they must eventually be released and can eventually find their way into the marketplace. Additionally, counterfeiters are becoming increasingly aware of this loophole and are shipping driver-side airbags without the trademark in order to avoid confiscation and prosecution. Once in the country, the manufacturer's insignia is attached and the counterfeit product is sold.

"Because of these shortcomings in federal law, Honda has worked with a coalition of stakeholders to push for legislation in states across the country that address these inadequacies. Over time this coalition has included automakers, auto dealers, insurers, automotive recyclers and several local safety groups. The airbag definition in Assembly Bill 2387 is broad enough to include all airbags not designed in accordance with federal motor vehicle safety standards. The bill also addresses those who knowingly manufacture, sell and install these products into the vehicles of unknowing consumers. We believe that this bill will provide a real disincentive to someone who would consider engaging in this heinous act, and allow the state to pursue such actors. Over the past three years our coalition has enacted similar laws in ten states (AL, CT, FL, IA, LA, NJ, NM, NY, OH & TX) by a combined vote of 1386-1. This bill was also adopted as model legislation by the Council of State Governments in their 2015 "Suggested State Legislation" docket. Existing California laws relating to airbag fraud do not address this specific and growing problem, but are consistent with the legislature's original intent of protecting consumers and we respectfully ask for your support in enacting this important consumer safety legislation."

8) **Argument in Opposition**: According to the *State of California Auto Dismantlers Association* (SCADA), "SCADA is opposed to AB 2387 because it guts the hard work of then Assemblywomen Brownley. In 2012, Assemblywoman Brownley worked with district attorneys, law enforcement, auto dismantlers and other to make it a crime to fraudulently repair deployed airbags and to sell or make repairs using deployed airbags or deployed airbag components. Current law and industry repair standards are clear that auto dismantlers, repair shops and the public cannot sell or install a deployed airbag or deployed air bag component.

"An additional concern we have is that under the definitions of 'airbag' and 'nonfunctional airbag,' the bill creates a new crime for a person who repairs a vehicle that has a deployed airbag or a deployed air bag component even when the repairs are being done under approved, required and established industry repair standards.

"Other than the issue of counterfeit airbags that is trying to be addressed in AB 2387, the Brownley law addresses all of the issues of concern outlined by the sponsor of the bill. It is for these reasons that SCADA must respectfully oppose AB 2387. However, we are supportive of efforts to address the issue of counterfeit airbags and would be happy to continue to work with you and the sponsor on the issue within the framework of the existing statute."

9) **Prior Legislation**: AB 1854 (Brownley), Chapter 97, Statutes of 2012, punishes as a misdemeanor any person who installs or tampers with a vehicle's computer system or supplemental restraint system, including, but not limited to, the supplemental restraint system's on-board system performance indicators, so that it falsely indicates the supplemental restraint system is in proper working order, and for a person to knowingly distribute or sell a previously deployed air bag or component that will no longer meet the original equipment manufacturing form or function for proper operation.

REGISTERED SUPPORT / OPPOSITION:

Support

Alliance of Automobile Manufacturers
Automobile Club of Southern California
California Professional Firefighters
Coalition Against Insurance Fraud
Ford Motor Company
Global Automakers, Inc.
Honda North America, Inc.

Opposition

Auto Dismantlers Association of Southern California
California Auto Dismantlers & Recyclers Alliance, Inc.
California Public Defenders Association
Inland Auto Dismantlers Association
LKQ Corporation
State of California Auto Dismantlers Association
Valley Auto Dismantlers Association

Analysis Prepared by: Matt Dean / PUB. S. / (916) 319-3744

Amendments Mock-up for 2015-2016 AB-2387 (Mullin (A))

**********Amendments are in *BOLD**********

Mock-up based on Version Number 99 - Introduced 2/18/16
Submitted by: Matt Dean, Assembly Committee on Public Safety

~~SECTION 1. Section 27317 of the Vehicle Code is repealed.~~
~~27317.A person who installs, reinstalls, rewires, tampers with, alters, or modifies for compensation, a vehicle's computer system or supplemental restraint system, including, but not limited to, the supplemental restraint system's on-board system performance indicators, so that it falsely indicates the supplemental restraint system is in proper working order, or who knowingly distributes or sells a previously deployed air bag or previously deployed air bag component that will no longer meet the original equipment manufacturing form or function for proper operation, is guilty of a misdemeanor punishable by a fine of up to five thousand dollars ($5,000) or by imprisonment in a county jail for up to one year, or by both the fine and imprisonment.~~

~~SEC. 2. Section 27317 is added to the Vehicle Code, to read:~~

~~27317. (a) The following definitions shall apply for purposes of this section:~~
~~(1) "Airbag" means a motor vehicle inflatable occupant restraint system, including all component parts, such as the cover, sensors, controllers, inflators, and wiring, that does both of the following:~~
~~(A) Operates in the event of a crash.~~
~~(B) Is designed in accordance with federal motor vehicle safety standards for the specific make, model, and year of the motor vehicle in which it is or will be installed.~~
~~(2) "Counterfeit airbag" means an airbag that displays a mark identical or similar to the genuine mark of a motor vehicle manufacturer without authorization from that manufacturer.~~
~~(3) "Nonfunctional airbag" means a replacement airbag that meets any of the following criteria:~~
~~(A) The airbag was previously deployed or damaged.~~
~~(B) The airbag has an electric fault that is detected by the vehicle airbag diagnostic system after the installation procedure is completed.~~
~~(C) The airbag includes a part or object, including, but not limited to, a counterfeit or repaired airbag cover, installed in a motor vehicle to mislead the owner or operator of the motor vehicle into believing that a functional airbag has been installed.~~
~~(b) A person shall not manufacture, import, install, reinstall, sell, or offer for sale any device with the intent that the device replace an airbag in any motor vehicle if the person knows or reasonably should know that the device is a counterfeit airbag or a nonfunctional airbag, or does not meet federal safety requirements as provided in Section 571.208 of Title 49 of the Code of Federal Regulations.~~

~~(c) A person shall not sell, or install or reinstall in a vehicle, any device that causes the vehicle's diagnostic system to inaccurately indicate that the vehicle is equipped with a functional airbag when a counterfeit airbag or nonfunctional airbag, or no airbag, is installed.~~
~~(d) A knowing violation of subdivision (b) or (c) shall be deemed an unfair or deceptive act or practice for purposes of the Consumers Legal Remedies Act (Chapter 1 (commencing with Sec. 1750) of Title 1.5 of Part 4 of Division 3, Civ. C.). Each manufacture, importation, installation, reinstallation, sale, or offer for sale shall constitute a separate and distinct violation.~~
~~(e) A knowing violation of subdivision (b) or (c) is a felony, punishable by a fine not to exceed five thousand dollars ($5,000), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code not to exceed five years, or by both that fine and imprisonment.~~

SECTION 1. Section 27317 of the Vehicle Code is amended to read:

27317. ***(a)*** A person who installs, reinstalls, rewires, tampers with, alters, or modifies for compensation, a vehicle's computer system or supplemental restraint system, including, but not limited to, the supplemental restraint system's on-board system performance indicators, so that it falsely indicates the supplemental restraint system is in proper working order, or who knowingly distributes or sells a previously deployed air bag or previously deployed air bag component that will no longer meet the original equipment manufacturing form or function for proper operation, ***or who knowingly distributes, sells, or installs a counterfeit or nonfunctional airbag*** is guilty of a misdemeanor punishable by a fine of up to five thousand dollars ($5,000) or by imprisonment in a county jail for up to one year, or by both the fine and imprisonment.
(b) Any person who manufactures, imports, installs, reinstalls, sells, or offers for sale any device with the intent that the device replace an airbag in any motor vehicle if the person knows or reasonably should know that the device is a counterfeit airbag or a nonfunctional airbag, or does not meet federal safety requirements as provided in Section 571.208 of Title 49 of the Code of Federal Regulations is guilty of a misdemeanor punishable by a fine of up to five thousand dollars ($5,000) or by imprisonment in a county jail for up to one year, or by both the fine and imprisonment.
(c) A person who installs a nonfunctional that is nonfunctional solely based on the definition in subparagraph (C) of paragraph (2) of subdivision (d) is only guilty of the offenses described in subdivisions (a) or (b) if, after the electric fault is detected by the vehicle airbag diagnostic system, the installer fails to either replace the nonfunctional airbag with a functional airbag in a reasonable time or fails to replace the notify the purchaser or other recipient of the vehicle that the airbag is nonfunctional.
(d) The following definitions shall apply for purposes of this section:
(1) "Counterfeit air bag" means an air bag that does any of the following: displays a mark identical or similar to the genuine mark of a motor vehicle manufacturer without authorization from that manufacturer; any air bag falsely represented to be an airbag of any true dealer, manufacturer or producer of the air bag; or a counterfeit or repaired airbag cover, installed in a motor vehicle to mislead the owner or operator of the motor vehicle into believing that a functional airbag has been installed.
(2) "Nonfunctional air bag" means:
(A) An air bag that is no longer in proper working order.

(B) An airbag was previously deployed or damaged.
(C) An airbag has an electric fault that is detected by the vehicle airbag diagnostic system after the installation procedure is completed.
(D) An airbag includes a part or object, including, but not limited to, a counterfeit or repaired airbag cover, installed in a motor vehicle to mislead the owner or operator of the motor vehicle into believing that a functional airbag has been installed.
(E) An airbag was subject to factory recall.

Date of Hearing: April 5, 2016
Consultant: Matt Dean

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2390 (Brown) – As Introduced February 18, 2016

SUMMARY: Clarifies that juveniles eligible for an honorable discharge would be automatically released from all penalties and disabilities resulting from their commitment, for the Department of Corrections and Rehabilitations, Division of Juvenile Justice (DJJ) to certify a finding the juvenile deserves an honorable discharge. Specifically, **this bill**:

1) States that each person honorably discharged from the control of either DJJ or from the control of the county probation department by the juvenile court shall be released from all penalties or disabilities resulting from the offenses for which they were committed.

2) Prohibits honorably discharged individuals from being either admitted to take a peace officer examination or becoming peace officers if, unless otherwise prohibited by law, less than five years have passed since the individual was discharged, the individual has been convicted of a non-traffic misdemeanor or any felony, or the individual is currently under the control of DJJ or a county probation department.

3) Requires DJJ, upon final discharge, to immediately certify the discharge or dismissal in writing and transmit the certificate to the court by which the person was committed.

4) Requires the court with jurisdiction over a discharged juvenile to dismiss the accusation and pending action against the discharged juvenile upon receipt of the DJJ's certificate.

5) Lists the penalties and disabilities from which the honorably discharged individual as including but not limited to any disqualification for any employment or occupational license, or both, unless otherwise prohibited.

6) Entitles every person honorably discharged to petition the court to set aside the verdict of guilty.

7) States that honorably discharged individuals are subject to prohibitions on ownership of firearms for specified offenses, including but not limited to violent offenses and drug crimes.

8) Allows convictions pursuant to specified serious juvenile offenses to be admissible as evidence if: the individual was 16 years of age or older at the time they committed the offense, the person was found unfit to be dealt with under juvenile court law, and the person was committed to DJJ for the offense for which they were found unfit.

9) States that a conviction for which an individual received an honorable discharge may still be used as a punishment enhancement for a subsequent offense.

10) States that a conviction of a person who is 18 years of age or older at the time he or she committed the offense is admissible in a subsequent civil, criminal or juvenile proceeding, if otherwise admissible.

11) Requires every person discharged from control of the DJJ or county probation department by the juvenile court to be informed of the provisions of this section in writing.

12) Defines "honorably discharged" as meaning and including every person whose discharged is based upon a good record on supervised release.

EXISTING LAW:

1) Defines "honorable discharge" as meaning and including "every person whose discharge is based upon a good record on parole." (Welf. & Inst. Code, §§ 1772, subd. (b), 1176, 1177, 1178 and 1179.)

2) States that juveniles committed for certain specified offenses are not eligible for honorable discharge. These offenses include all of the following:

   a) Murder;

   b) Arson, as specified;

   c) Robbery;

   d) Rape with force, violence, or threat of great bodily harm;

   e) Sodomy by force, violence, duress, menace, or threat of great bodily harm;

   f) A lewd or lascivious act on a child;

   g) Oral copulation by force, violence, duress, menace, or threat of great bodily harm;

   h) Sexual penetration;

   i) Kidnapping for ransom, purposes of robbery, or with bodily harm;

   j) Attempted murder;

   k) Assault with a firearm or destructive device or by any means of force likely to produce great bodily injury;

   l) Discharge of a firearm into an inhabited or occupied building;

   m) Specified crimes against persons over 60 years of age;

   n) Specified firearms offenses in commission of a felony;

o) Dissuading a witness;

p) Manufacturing, compounding, or selling one-half ounce or more of a salt or solution of a controlled substance;

q) A violent felony;

r) Escape, by the use of force or violence, from a county juvenile hall, home, ranch, camp, or forestry camp if great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape;

s) Torture as described;

t) Aggravated mayhem, as described;

u) Carjacking, as described, while armed with a dangerous or deadly weapon;

v) Kidnapping for purposes of sexual assault;

w) Kidnapping;

x) Permitting a loaded firearm in a motor vehicle;

y) Igniting an explosive device, as specified; or

z) Voluntary manslaughter. (Welf. & Inst. Code, § 1772; Pen. Code, § 707, subd. (b).)

3) Requires the Youth Advisory Board to discharge juveniles from their control, to certify the discharge and to notify the court in writing of the discharge. (Welf. & Inst. Code, §§ 1179, 1772.)

4) Transfers jurisdiction over juveniles on supervised release from the Youth Advisory Board to county probation departments and local juvenile courts. (Welf. & Inst. Code, §§ 607.1, 1766 and 1766.01.)

5) Holds that the current law provides no mechanism by which the DJJ may find and certify an honorable discharge for juveniles under the control of local probation departments and the local juvenile court. (*In re J.S.*, 237 (2015) Cal.App.4th 452.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 2390 would re-establish the 'honorable discharge' program that was inadvertently eliminated by 2010 Budget Trailer Bill language. The inability to earn an honorable discharge means these youths' criminal record stays with them, disqualifying them from employment opportunities and occupational licensing requirements. The inadvertent elimination of this program also has removed a valuable anti-recidivism tool and incentive to keep youth crime-free while on probation. Without

honorable discharge status, the record of even rehabilitated youth will follow them as they try to make it in the outside world."

2) **Corrects an Inadvertent Error in 2010 DJJ Realignment**: In a 2010, most of the authority for the discharge of juveniles was transferred from DJJ to local juvenile courts. Local juvenile courts now release juveniles from the control of the county probation department except in the limited instances where the DJJ maintains this responsibility. Either the juvenile court or DJJ can find the juvenile eligible for honorable, general or dishonorable discharge, depending on their behavior while incarcerated.

   Prior to DJJ realignment, DJJ could find the juvenile eligible for an honorable discharge, releasing the juvenile from any penalties and disabilities resulting from their conviction. Upon DJJ making an honorable discharge determination, courts were required to automatically release the juvenile from the penalties and disabilities resulting from their conviction. After realignment, the court found the statutory scheme was missing a mechanism for local probation departments or the courts to make an honorable discharge finding, although the court admitted this was likely an inadvertent error by the Legislature.

   Specifically, in *In re J.S.*, 237 (2015) Cal.App.4th 452, the California Court of Appeal for the Sixth District found that courts have the discretion to release juveniles from all penalties and disabilities resulting from their conviction. As a result, the court thought the remedy of fixing the Legislature's mistake would be improper, due to the availability of multiple mechanisms for fixing this oversight and the ability for juveniles to apply to the court for the same relief they were previously granted automatically.

   This bill fixes the Legislature's inadvertent omission by providing a mechanism by which an honorable discharge may be determined and then requiring the courts to once again automatically release juveniles from all penalties and disabilities resulting from their conviction upon such a determination.

3) **Argument in Support**: According to the *California Conference of Bar Associations*, "AB 2390 will enable juvenile offenders with good records on supervised probation to once again obtain honorable discharge status, enabling them to clear their records. This authority was inadvertently eliminated by the Legislature in 2010, and must be restored by statutory amendment.

   "Prior to 2011, youthful offenders committed to the California Youth Authority could earn an honorable discharge by meeting behavioral and treatment program expectations, including paying off court-ordered restitution. Under this system, a juvenile who successfully completed parole after custody, and had shown an 'ability for honorable self-support' in the view of the Youthful Offender parole board, received an 'honorable discharge' that removed all future penalties attached to the crimes. If youths do not have access to honorable discharge, their criminal record stays with them and they may be disqualified from employment opportunities and occupational licensing requirements.

   "In 2010, the Legislature enacted AB 1628, the Corrections Budget Trailer Bill for that year. Among the bill's many provisions were those establishing "Juvenile Parole Realignment." Like regular Realignment, which shifted responsibility for incarcerating lower-level felons in county jails, Juvenile Parole Realignment shifted responsibility for the supervision of

offenders released from state juvenile facilities from the state Juvenile Parole Board to county probation departments. However, the amended law failed to authorize anyone at the local level to issue honorable discharges pursuant to Welfare and Institutions Code §1772 and §1179. This oversight effectively rendered the honorable discharge program de facto inoperable.

"Courts that have confronted the issue have acknowledged that the removal of this authority was inadvertent, but have stated that the problem must be fixed by corrective statutory amendment (see *In re J.S.*, 237 Cal.App.4th 452 (2015).

"The inability to earn an honorable discharge prevents rehabilitated youth from obtaining the necessary employment they need to earn a living and a valuable anti-recidivism tool has been removed as an incentive to keep youth crime free while on probation. Without honorable discharge status, the record of even rehabilitated youth will follow them as they try to make it in the outside world."

4) **Prior Legislation**: AB 1628 (Committee on Budget), Chapter 729, Statutes of 2010, transferred the majority of responsibility for supervised release of juveniles from DJJ to local courts and county probation departments.

REGISTERED SUPPORT / OPPOSITION:

Support

Conference of California Bar Associations (Sponsor)
Anti-Recidivism Coalition
California Attorneys for Criminal Justice
California Public Defenders Association

Opposition

None

Analysis Prepared by: Matt Dean / PUB. S. / (916) 319-3744

Date of Hearing: April 5, 2016
Consultant: Matt Dean

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2457 (Bloom) – As Introduced February 19, 2016
As Proposed to be Amended in Committee

SUMMARY: Allows coroners to use an electronic imaging system during the conduct of an autopsy, unless there is a reasonable suspicion to believe the death was caused by a criminal act or a contagious disease. Specifically, **this bill**: allows coroners, medical examiners and other authorized personnel to conduct an autopsy or post-mortem examination to use an electronic imaging system during the conduct of an autopsy or post-mortem examination to either aid in the performance of an autopsy pursuant to an inquest, or to fulfill the performance of an autopsy requested by the surviving spouse or next of kin where there is no suspicion a criminal act or contagious disease was the cause of death.

EXISTING LAW:

1) Requires coroners to determine the manner, circumstances and cause of death in the following circumstances:

   a) Violent, sudden or unusual deaths;

   b) Unattended deaths;

   c) When the deceased was not attended by a physician, or registered nurse who is part of a hospice care interdisciplinary team, in the 20 days before death;

   d) When the death is related to known or suspected self-induced or criminal abortion;

   e) Known or suspected homicide, suicide or accidental poisoning;

   f) Deaths suspected as a result of an accident or injury either old or recent;

   g) Drowning, fire, hanging, gunshot, stabbing, cutting, exposure, starvation, acute alcoholism, drug addiction, strangulation, aspiration, or sudden infant death syndrome;

   h) Deaths in whole or in part occasioned by criminal means;

   i) Deaths associated with a known or alleged rape or crime against nature;

   j) Deaths in prison or while under sentence;

   k) Deaths known or suspected as due to contagious disease and constituting a public hazard;

l) Deaths from occupational diseases or occupational hazards;

m) Deaths of patients in state mental hospitals operated by the State Department of State Hospitals;

n) Deaths of patients in state hospitals serving the developmentally disabled operated by the State Department of Development Services;

o) Deaths where a reasonable ground exists to suspect the death was caused by the criminal act of another; and

p) Deaths reported for inquiry by physicians and other persons having knowledge of the death. (Gov. Code, § 27491.)

2) Requires the coroner or medical examiner to sign the certificate of death when they perform a mandatory inquiry. (Gov. Code, § 27491, subd. (a).)

3) Allows the coroner or medical examiner discretion when determining the extent of the inquiry required to determine the manner, circumstances and cause of death. (Gov. Code, § 27491, subd. (b).)

4) Requires the coroner or medical examiner to conduct an autopsy at the request of the surviving spouse or other specified persons when an autopsy has not already been performed. (Gov. Code, § 27520, subd. (a).)

5) Allows the coroner or medical examiner discretion to conduct an autopsy at the request of the surviving spouse or other specified persons when an autopsy has already been performed. (Gov. Code, § 27520, subd. (b).)

6) Specifies that the cost of autopsies requested by the surviving spouse or other specified persons are borne by the requestor. (Gov. Code, § 27520, subd. (c).)

7) Requires that discretionary autopsies include the following:

a) All available finger and palm prints;

b) Dental examination;

c) Collection of tissue including hair sample and DNA sample, if necessary;

d) Notation and photographs of significant marks, scars, tattoos and personal effects;

e) Notation of observations pertinent to the time of death; and

f) Documentation of the location of the remains. (Gov. Code, § 27521, subds. (a) and (b).)

8) Allows for the use of full body X-rays in conducting a discretionary autopsy. (Gov. Code, § 27521, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 2457 is a common sense approach that would specifically authorize county coroners or county medical examiners to utilize digital imaging technology when performing an autopsy in cases where an autopsy is needed or mandated by law."

2) **Electronic Imaging Systems for Autopsies**: Electronic imaging systems, such as computer tomography (CT), magnetic resonance imaging (MRI) and X-ray computed tomography scanning, have been used increasingly in recent years to assist coroners and medical examiners performing autopsies. In certain cases, these systems can help the coroner determine the cause of death without performing a post-mortem dissection of the deceased. This can be especially helpful in cases where the deceased or the deceased's surviving spouse or next of kin have religious objections to the post mortem dissections common in traditional autopsies. This bill would allow coroners and medical examiners to use these electronic imaging systems during the performance of an autopsy requested by a surviving spouse or next of kin.

   This bill would also allow coroners, medical examiners and other agencies tasked with performing an autopsy to utilize electronic imaging systems to assist in the performance of a mandatory inquest. Existing law requires coroners and others to perform an autopsy when there is reason to believe the death was caused by a criminal act, either by another or by the deceased, and when the coroner or other agency tasked believes a contagious disease constituting a public health hazard may be the cause of death. This bill would not allow electronic imaging systems to be the sole method by which these mandatory autopsies are performed, but would allow them to be used during these autopsies. There are two main reasons for this: first, electronic imaging systems as a method for performing autopsies have not been ruled admissible as evidence by any court of law; and second, the current electronic imaging system technology has been shown to be unreliable in determining certain causes of death.

3) **Admissibility Concerns**: Any evidence submitted before a court of law must be deemed admissible. For scientific evidence and expert testimony, the court will conduct either a *Daubert* or *Frye* style hearing –depending on whether the case is before federal or state court, respectively) to determine the reliability of the particular type of evidence before the court. (see *Daubert v. Merrell Dow Pharms., Inc.* (1993) 509 U.S. 579; *People v. Leahy* (1994) 8 Cal.4th 587.) To date, no federal or California court has ruled on the admissibility of autopsies performed using an electronic imaging system. Without such a ruling, we cannot be sure that autopsies performed using solely electronic imaging systems will be admissible evidence. Given the importance of autopsies in many criminal investigations and prosecutions, it would be wise to wait until electronic imaging system technology advances to the point where it would be admissible. In one study, one in three autopsies performed using both electronic imaging systems and traditional dissection autopsies resulted in finding different causes of death. <http://blogs.scientificamerican.com/observations/will-ct-scans-and-mris-kill-the-autopsy/> However, the study also found that for certain causes of death, the electronic imaging systems were sufficient. Allowing coroners to use electronic imaging systems for the limited purposes herein described is a good first step in advancing the utility

of these promising technologies.

4) **Summary of Amendments**: The amendments before the Committee accomplish the mutual goals of allowing coroners, medical examiners and other tasked with performing autopsies the ability to use electronic imaging systems in an autopsy, while maintaining the requirement that whenever there is any suspicion the death was caused by a criminal act or contagious disease, a dissection autopsy is used to determine the cause of death. This will also achieve the goal of allowing people of faith with religious objections to dissection to receive an electronic imaging autopsy on request.

5) **Argument in Support**: According to *Agudath Israel of California*, "AB 2457 will allow the use of digital radiologic technology in lieu of an autopsy by dissection. In many coroners' cases, the use of digital radiologic technology is more than adequate to establish a cause of death without the performance of traditional autopsy by dissection. Coroner's offices throughout the country are installing such technology because it assists with completion of their caseloads in a more cost-effective and efficient manner. This is not to say that such technology replaces dissection autopsy, however, at the discretion of the coroner, when such technology is sufficient for their needs, it should be utilized.

"There are a number of situations in which some feel that there may be a California state legal mandate for a physical autopsy. This legislation would allow coroners, at their discretion, to utilize digital radiology to fulfill their responsibility. For the Jewish community as well as other communities of faith, autopsies are generally prohibited with certain exceptions. This bill would allow coroners who have access to such radiologic technology to accommodate religious concerns in cases where they see fit to do so."

6) **Related Legislation**:

   a) SB 1189 (Pan), requires that the results of an autopsy conducted by a coroner be subject to review by a licensed surgeon who is duly qualified as a specialist in pathology. If the coroner and pathologist disagree about a cause of death, this bill would require that the cause of death be subject to review by a separate qualified pathologist. This bill would authorize a coroner who is a qualified pathologist to review and approve his or her own autopsy. SB 1189 is pending in the Senate Committee on Health.

   b) AB 1737 (McCarty), requires each county to establish an interagency child death review team to assist local agencies in identifying and reviewing suspicious child deaths and facilitating communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases. AB 1737 is pending in the Assembly Committee on Local Government.

7) **Prior Legislation**:

   a) SB 1196 (Runner), Chapter 45, Statutes of 2008, requires coroners or medical examiners to perform an autopsy at the request of the deceased's next of kin and requires coroners or medical examiners to inquire into deaths when the deceased was not attended to by a physician or registered nurse in the 20 days prior to death.

REGISTERED SUPPORT / OPPOSITION:

Support

Agudath Israel of California
California State Coroners' Association

Opposition

None

Analysis Prepared by: Matt Dean / PUB. S. / (916) 319-3744

Amended Mock-up for 2015-2016 AB-2457 (Bloom (A))

*********Amendments are in *BOLD*********

Mock-up based on Version Number 99 - Introduced 2/19/16
Submitted by: Matt Dean, Assembly Committee on Public Safety

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 27521 of the Government Code is amended to read:

27521. (a) A postmortem examination or autopsy conducted at the discretion of a coroner, medical examiner, or other agency upon an unidentified body or human remains is subject to this section.

(b) A postmortem examination or autopsy shall include, but shall not be limited to, the following procedures:

(1) Taking of all available fingerprints and palm prints.

(2) A dental examination consisting of dental charts and dental X-rays of the deceased person's teeth, which may be conducted on the body or human remains by a qualified dentist as determined by the coroner.

(3) The collection of tissue, including a hair sample, or body fluid samples for future DNA testing, if necessary.

(4) Frontal and lateral facial photographs with the scale indicated.

(5) Notation and photographs, with a scale, of significant scars, marks, tattoos, clothing items, or other personal effects found with or near the body.

(6) Notations of observations pertinent to the estimation of the time of death.

(7) Precise documentation of the location of the remains.

(c) The postmortem examination or autopsy of the unidentified body or remains may include full body X-rays.

~~(d) An electronic image system, including, but not limited to, an X-ray computed tomography scanning system, may be used to fulfill the requirements of subdivision (b) or of a postmortem examination or autopsy required by other law, including, but not limited to, Section 27520.~~

(d) At the sole and exclusive discretion of the coroner, medical examiner, or other agency tasked with performing an autopsy pursuant to section 27491, an electronic image system, including, but not limited to, an X-ray computed tomography scanning system, may be used to fulfill the requirements of subdivision (b) or of a postmortem examination or autopsy required by other law, including but not limited to, section 27520.

(1) Nothing herein imposes a duty upon any coroner, medical examiner, or other agency tasked with performing autopsies pursuant to section 27491 to actually perform autopsies using an electronic image system or to acquire the capability to do so.

(2) Under no circumstances may a coroner, medical examiner, or other agency tasked with performing an autopsy pursuant to section 27491 utilize an electronic imaging system to conduct an autopsy in any investigation where the circumstances surrounding the death afford a reasonable basis to suspect that the death was caused by or related to the criminal act of another. If the results of an autopsy performed using electronic imaging provides the basis to suspect that the death was caused by or related to the criminal act of another, then a dissection autopsy shall be performed in order to determine the cause and manner of death.

(3) An autopsy may be conducted using X-ray computed tomography scanning system notwithstanding the existence of a properly executed certificate of religious belief made pursuant to section 27491.43.

(e) The coroner, medical examiner, or other agency performing a postmortem examination or autopsy shall prepare a final report of investigation in a format established by the Department of Justice. The final report shall list or describe the information collected pursuant to the postmortem examination or autopsy conducted under subdivision (b).

(f) The body of an unidentified deceased person shall not be cremated or buried until the jaws (maxilla and mandible with teeth), or other bone sample if the jaws are not available, and other tissue samples are retained for future possible use. Unless the coroner, medical examiner, or other agency performing a postmortem examination or autopsy has determined that the body of the unidentified deceased person has suffered significant deterioration or decomposition, the jaws shall not be removed until immediately before the body is cremated or buried. The coroner, medical examiner, or other agency responsible for a postmortem examination or autopsy shall retain the jaws and other tissue samples for one year after a positive identification is made, and no civil or criminal challenges are pending, or indefinitely.

(g) If the coroner, medical examiner, or other agency performing a postmortem examination or autopsy with the aid of the dental examination and any other identifying findings is unable to establish the identity of the body or human remains, the coroner, medical examiner, or other agency shall submit dental charts and dental X-rays of the unidentified deceased person to the

Department of Justice on forms supplied by the Department of Justice within 45 days of the date the body or human remains were discovered.

(h) If the coroner, medical examiner, or other agency performing a postmortem examination or autopsy with the aid of the dental examination and other identifying findings is unable to establish the identity of the body or human remains, the coroner, medical examiner, or other agency shall submit the final report of investigation to the Department of Justice within 180 days of the date the body or human remains were discovered. The final report of investigation shall list or describe the information collected pursuant to the postmortem examination or autopsy conducted under subdivision (b), and any anthropology report, fingerprints, photographs, and autopsy report.

Date of Hearing: April 5, 2016
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2459 (McCarty) – As Introduced February 19, 2016

SUMMARY: Imposes duties and responsibilities upon firearms retailers as specified. Specifically, **this bill**:

1) Permits the Department of Justice (DOJ) to impose a civil fine of up to $500 against firearms dealers for a breach of specified prohibitions. Additionally, provides for a fine of up to $2,000 for breaches when the licensee previously received written notification from the DOJ regarding the breach and failed to take corrective action, or the DOJ determines that the licensee committed the breach knowingly or with gross negligence.

2) Prohibits, commencing January 1, 2018, a firearms dealer license from designating a building that is a residence, as defined, as a building where the licensee's business may be conducted.

3) Provides that the provisions of this bill would not preclude or preempt a local ordinance that places additional or more stringent requirements on firearms dealers regarding where the business of the licensee may be conducted.

4) Requires a licensee to ensure that its business premises are monitored by a video surveillance system that, among other requirements, visually records and archives footage of the following:

   a) Every sale or transfer of a firearm or ammunition, in a manner that makes the facial features of the purchaser or transferee clearly visible in the recorded footage;

   b) All places where firearms or ammunition are stored, displayed, carried, handled, sold, or transferred;

   c) The immediate exterior surroundings of the licensee's business premises; and

   d) All parking areas owned or leased by the licensee.

5) Specifies that the video footage must be maintained and stored for not less than 5 years.

6) Requires, commencing January 1, 2018, a licensee to obtain a policy of commercial insurance that insures the licensee against liability for damage to property and for injury to or death of any person as a result of the theft, sale, lease or transfer or offering for sale, lease or transfer of a firearm or ammunition, or any other operations of the business and business premises, in the amount of $1,000,000 per incident, as specified. Provides that these provisions would not preclude or preempt a local ordinance that places additional or more stringent requirements on firearms dealers regarding insurance pertaining to the licensee's business.

EXISTING LAW:

1) States that, in general and subject to exceptions, the business of a firearms licensee shall be conducted only in the buildings designated by the business license; (Pen. Code § 26805, subd. (a).)

   a) Provides an exception that a person licensed, as specified, may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at any gun show or event if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business shall be entitled to conduct business as authorized at any gun show or event in the state, without regard to the jurisdiction within this state that issued the license provided the person complies with all applicable laws, including, but not limited to, the waiting period specified, and all applicable local laws, regulations, and fees, if any; (Pen. Code § 26805, subd. (b)(1).)

   b) Provides an exception for a person licensed as specified may engage in the sale and transfer of firearms other than handguns, at specified events, subject to the prohibitions and restrictions contained in those sections; (Pen. Code § 26805, subd. (c)(1).)

   c) Provides an exception for a person licensed, as specified, who may also accept delivery of firearms other than handguns, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified; (Pen. Code § 26805, subd. (c)(2).)

   d) Provides that a firearm may be delivered to the purchaser, transferee, or person being loaned the firearm at one of the following places: (Pen. Code § 26805, subd. (d).)

      i) The building designated in the license;

      ii) The places specified as express exemptions; and

      iii) The place of residence of, the fixed place of business of, or on private property owned or lawfully possessed by, the purchaser, transferee, or person being loaned the firearm.

2) Provides a person conducting specified firearms business shall publicly display the person's license issued, or a facsimile thereof, at any gun show or event, as specified in this subdivision. (Pen. Code § 26805, subd. (b)(2).)

FISCAL EFFECT:

COMMENTS:

1) **Author's Statement**: According to the author, "As a local elected official, I authored successful measures to crack down on illegal gun and ammunition sales. As a State Assemblymember, I am proud to author AB 2459, which I believe will have a strong impact statewide in the effort to keep guns out of the wrong hands."

2) **Background**: According to the background submitted by the author, "Law Enforcement has limited resources to oversee the more than 2,300 licensed gun dealers in our state. A 2010 Washington Post report found that, due to limited staffing, ATF could only inspect gun dealers once per decade on average. These limitations, combined with weak state and federal laws related to gun dealers, allow many bad actor gun dealers to evade accountability.

"A New York Times article 'How They Got Their Guns,' brought to light the fact that since 2009, 15 mass shooting were committed with legally purchased firearms. This discredits the notion that only illegal firearms are used in the commission of these heinous acts. A study by the Bureau of Alcohol, Tobacco and Firearms, found that 60% of legally purchased weapons found at crime scenes came from 1% of gun dealers. Later studies have estimated that 90% of legally purchased guns used in the commission of a crime were from 5% of gun dealers. In 2014, 2,935 Californians were killed by firearms.

"Many of these gun sales were so called 'straw sales' whereby a person prohibited from purchasing a gun uses a third party, often a family member or friend, to legally purchase the gun. These sales are legal on paper, but when recorded becomes obvious that the purchaser has no interest in purchasing the gun for themselves. Video recording is a common practice in all types of retail and provides safety and security for both store employees and customers.

"In two academic studies, undercover researchers found that at least 20% of California gun dealers were willing to conduct an illegal 'straw purchase;' even when the dealer knew the gun would be used by a prohibited person. Though these transactions are a leading source of guns used during crimes, they often appear legal on paper without security cameras to visibly capture the sale. California gun dealers also reported 1,797 firearms 'missing' from their inventories from 2012-2015. Without security cameras monitoring dealers' premises and sales counters, law enforcement has few tools to investigate whether these firearms were misplaced, stolen, or illegally trafficked to criminals.

"Another source of legally purchased guns are residential dealers, which are licensed dealers who sell weapons out of their homes. To date, over 60 cities and counties in California have banned this practice, recognizing the potential for abuse and lack of adequate oversight."

3) **Content of the Bill:** This proposed legislation basically implements four changes to existing law for the stated purposes of cutting down on straw purchases in California.

   a) **Imposition of Civil Fines for Violations of Rules Related to Grounds for Forfeiture of a License to Sell Firearms:** The bill proposes new fines related to violations of rules imposed upon licensees. The fines suggested are up to a $500 civil fine for simple violations, and up to $2,000 fines for violations when the licensee previously received written notification from the DOJ regarding the breach and failed to take corrective action, or the DOJ determines that the licensee committed the breach knowingly or with gross negligence. The grounds for forfeiture include a wide range of conduct, including the following: properly displayed license, proper delivery of a firearm, properly displaying firearms, prompt processing of firearms transactions, posting of warning signs, safety certificate compliance, checking proof of California residence, safe handling demonstrations, offering a firearms pamphlet, and many more.

b) **Requiring Gun Dealers to Install Security Cameras to Monitor and Videotape their Premises and Sales**: The sponsor and author have indicated that the requirement to install video surveillance cameras in businesses that sell firearms will discourage straw purchases and illegal activities. The fact that purchasers and sellers are being recorded while sales are being conducted will arguably shed light on transactions. Retailers are opposed because it places an overly-burdensome expense on the business to maintain a security camera system, and retain and store the footage captured. The footage must be maintained for not less than five years. Additionally, the American Civil Liberties Union objects to this provision on grounds of a violation of privacy.

c) **Prohibiting Gun Dealers from Selling Weapons from their Homes**: The author's intent in this provision is to push firearms transactions into lawful places of business, where they are more likely to be legitimate. The sponsor believes that by permitting the sale of firearms from a private residence that illegal transactions such as straw purchases are much more likely. There is a legislative history to this provision. AB 988 (Lowenthal), of the 1999-2000 Legislative Session stated that no licenses to sell firearms could be granted to sell firearms out of residential buildings. AB 22 (Lowenthal), of the 2001-2002 Legislative Session, prohibited the retail sale of firearms from a residential dwelling with specific exceptions. Both bills failed passage on the Senate floor. This bill would cover specialty gun smiths, and those concerns were brought up in the prior legislative sessions in which this provision was considered.

d) **Requiring Gun Dealers to Carry Liability Insurance:** According to the sponsor, 31 localities have enacted this provision of law (including San Francisco and Los Angeles). Gun dealers would be required to carry insurance of at least a million dollars to insure them for their liability for damage to property and for injury to or death of any person as a result of the theft, sale, lease or transfer or offering for sale, lease or transfer of a firearm or ammunition, or any other operations of the business and business premises. The Federal "Protection of Lawful Commerce in Arms Act" (PLCAA) is a United States law which protects firearms manufacturers and dealers from being held liable when crimes have been committed with their products. However, both manufacturers and dealers can still be held liable for damages resulting from defective products, breach of contract, criminal misconduct, and other actions for which they are directly responsible in much the same manner that any U.S. based manufacturer of consumer products is held responsible. They may also be held liable for negligence when they have reason to know a gun is intended for use in a crime.

4) **Argument in Support**: According to *The Law Center to Prevent Gun Violence,* "On behalf of the Law Center to Prevent Gun Violence, I strongly urge you to support AB 2459 (McCarty), legislation the Law Center is co-sponsoring to help ensure that firearms dealers operate responsibly in California. Founded by lawyers after an assault weapon massacre at a San Francisco law firm in 1993, the Law Center provides legal expertise in support of gun violence prevention to federal, state, and local legislators nationwide.

"AB 2549 would bring increased security, transparency, and accountability to gun sales in California by requiring gun dealers to comply with a set of responsible business practices and by authorizing DOJ to fine irresponsible dealers for illegal conduct.

"ATF data confirms that firearms dealers are the leading source of guns on the black market, responsible for 'nearly half of the total number of trafficked firearms' uncovered in ATF investigations. Though stolen firearms are also a major source of black market guns, 4.5 times as many are obtained from gun dealers as are stolen from any source. According to ATF, gun dealers' 'access to large numbers of firearms makes them a particular threat to public safety when they fail to comply with the law.' On average, ATF trafficking investigations implicating a gun dealer involved over 350 black market guns *per investigation*, and over 550 guns in cases in which the dealer was the sole trafficker. In the wrong hands, every one of those weapons poses a significant threat to public safety.

"Unfortunately, federal law enforcement has limited resources to oversee the more than 2,300 licensed gun dealers in our state. A 2010 Washington Post investigation found that, due to limited staffing, ATF could only inspect gun dealers *once per decade* on average. These limitations, combined with weak state and federal dealer laws, allow too many bad apple gun dealers to evade accountability for allowing dangerous people to access deadly weapons. Although California has enacted some laws to regulate gun dealers, stronger oversight is necessary to help law enforcement detect and prevent gun dealer practices that endanger our communities.

"Numerous California cities and counties have already enacted laws to promote responsible gun sales. AB 2459 would extend these best practices statewide by:

1. "Requiring gun dealers to sell weapons out of commercial storefronts instead of their homes. Existing law permits gun dealers to sell large firearm inventories out of private residences, locations that are *more* accessible to children and burglars but *less* accessible to law enforcement oversight than commercial storefronts. Home-based dealers threaten the safety and character of their communities, as neighbors and local law enforcement are often unaware that significant quantities of weapons are flowing in and out of their residential streets. As a 2012 Pinole City Council Planning Commission concluded, "The safety of residents in close proximity to home-based firearm and ammunition sales poses concerns about the negative influence of such home occupations on children, the possible increase in violence and/or criminals in residential neighborhoods, trafficked firearms, and the frequency of federal and state inspections to adequately regulate these business operations once established." In upholding Lafayette's residential dealer ban, a California Appeals Court similarly noted that, "because dealerships can be the targets of persons who are or should be excluded from possessing weapons, it is reasonable to insist that dealerships be located away from residential areas[.]" California law generally prohibits individuals from operating liquor establishments out of a private residence, and restricts the use of residential property by businesses ranging from barbers and cosmetologists to funeral parlors. Businesses that sell deadly weapons to the public should be held to a similar standard. Fifty-nine cities and counties in California have already enacted laws specifically prohibiting residential gun dealers and 58 others have enacted generally applicable laws that indirectly do the same.

2. "Requiring gun dealers to install security cameras to monitor their premises and sales. This provision would help detect and prevent theft and illegal conduct and curb the flow of guns to the black market. In two academic studies, undercover researchers found that at least 20% of California gun dealers were willing to conduct an illegal

'straw purchase,' even when dealers knew the gun was being purchased for a prohibited person such as a felon. Though straw purchases are a leading source of crime guns, they often appear legal on paper without security cameras to visibly capture the sale. California gun dealers also reported 1,797 firearms 'missing' from their inventories from 2012-2015. Without security cameras monitoring dealers' premises and sales counters, law enforcement has few tools to investigate whether these firearms were misplaced, stolen, or illegally trafficked to criminals. Five local governments in California have already enacted this type of law and responsible businesses regularly install and maintain security camera footage without significant cost or administrative burden.

3. "Requiring gun dealers to carry liability insurance. This provision would help ensure that people injured by negligent conduct receive compensation for their injuries. To be clear, this provision would *not create* any new liability for gun dealers, just as a law requiring drivers to carry car insurance does *not create* liability for roadway accidents. However, this bill would ensure that a gun dealer would be covered for valid claims if the business is found civilly liable for negligence under existing law, in cases ranging from a slip-and-fall in the dealer's store to an employee's negligent sale of a firearm to a visibly drunk or unstable individual. Because insurance is generally cheaper for responsible businesses, just as car insurance is cheaper for good drivers, this requirement would also incentive responsible behavior over time. Thirty-one localities in California have already enacted this law.

"Finally, AB 2459 would provide DOJ with discretion to fine gun dealers for violations of the law without permanently revoking a dealer's license to sell firearms. Under existing law, DOJ's enforcement powers are essentially all-or-nothing: when it discovers a significant legal violation, DOJ must either revoke a dealer's license or let the dealer continue to operate. As a result, too many irresponsible dealers face no accountability for illegal conduct; conversely, gun dealers may also fear that they will lose their license based on correctable errors. This bill would provide DOJ with tools to craft a more balanced approach to incentivize compliance and improve public safety.

"AB 2459 is consistent with the Second Amendment. Although gun lobbyists frequently argue that any and all gun safety laws violate the Second Amendment, legislation like AB 2459 is clearly constitutional. When the Supreme Court recognized an individual Second Amendment right in *District of Columbia v. Heller*, Justice Scalia made clear in writing for the Court that '*nothing in [the Court's] opinion should be taken to cast doubt on . . . laws imposing conditions and qualifications on the commercial sale of firearms.*' This legislation proposes to do just that, placing common sense qualifications on the commercial sale of firearms by requiring gun dealers to comply with a set of responsible business practices. As such, these requirements are consistent with the Second Amendment. See *Teixeira v. County of Alameda*, 2013 U.S. Dist. LEXIS 36792, *15-18 (N.D. Cal. 2013) (rejecting a Second Amendment challenge to an Alameda County law regulating the location of firearms dealers).

5) **Argument in Opposition**: According to *The Firearms Policy Coalition*, "AB 2459 (McCarty) is a measure that will jeopardize public safety by shutting down a significant portion of the businesses that serve as agents of the state, providing the only lawful means in California to conduct firearms transactions.

"This measure seeks to completely outlaw the lawful business operations of Federal Firearms Licensees who do not operate out of a traditional commercial facility. AB 2459 does this by pre-empting all cities, counties and their respective zoning, planning and business license and revenue ordinances. By defying California's traditional local control doctrine, AB 2459 robs over 500 local elected bodies of their ability to decide what is best for their communities.

"This measure also mandates retailers to use security cameras down to a level of nuance that is disturbing in its Orwellian fascination with completely lawful and moral activities, requiring the constant recording of '*All places where firearms or ammunition are stored, displayed, carried, handled, sold, or transferred, including, but not limited to, counters, safes, vaults, cabinets, shelves, cases, and entryways.*'

"AB 2459 also requires that the customers face be clearly recorded. These are the same customers who have already provided a Firearm Safety Certificate (or License to Carry), proof of residence, valid government photo identification and submitted to one the nation's most stringent background checks. How does recording the facial features of the most already positively identified customers of any industry in the nation serve the public interest?

"The additional data storage requirement is also vexing. Storing high quality data from potentially hundreds of camera angles on-site for 5 years minimum (and up to 10) may require the consultation or employ of technology professionals and hundreds or thousands of hard drives in order to comply with this bizarre mandate that seeks to make the state a voyeur in every nook and cranny of a firearms store.

"Should a staffer pick up and move a box of ammunition without Big Brother catching every pixel, the retailer will be punished by the state. While it may sound perverse to film your own staff who have been vetted by the employer and the California Department of Justice, AB 2459 demands that all lawful, moral and mundane activity be recorded at the retailer's expense---'for transparency.'

"Requiring that retailers potentially violate their lease agreements by placing camera equipment outside of buildings or in parking lots may not be feasible for all retailers, but it's unlikely they will be able to comply with AB 2459 at any rate.

"The final portion of the measure is difficult to articulate our opposition to, given it mandates a product that does not exist. AB 2459 mandates a form of insurance-- a policy that covers the criminal acts of second, third and fourth parties, even if the retailer is in fact the victim of a crime, such as theft or kidnapping. While an amazing fantasy put in print for trial lawyers, even they know that should it ever exist, it would immediately put all insurers and retailers alike out of business.

"To summarize, AB 2459 is a clear case of 'be careful what you wish for.' The retailers and small businesses that AB 2459 seeks to either outlaw or run out of the state are the ONLY means for over 38 million Californians to comply with the state's overwhelmingly complex firearms laws. By eliminating trusted local businesses either by prohibition or by outrageous mandates, the demand for over 1 million firearms annually in California will not go with them. When there is a dearth of available options, the market will find other avenues.

"Firearms retailers are agents of the state, who process private party transactions (often at a loss) in accordance with state law, to serve the state's interest in conducting background checks and firearms registration. By shutting them down, the state risks being unable to adequately service the million of firearms lawfully transacted annually in California and therefore risks a self-created black market.

"We therefore urge the Chair and the committee to reject this measure that usurps local control and harms the state's public safety interests."

6) **Prior Legislation**:

a) AB 988 (Lowenthal), of the 1999-2000 Legislative Session, stated that no licenses to sell firearms could be granted to sell firearms out of residential buildings. Failed passage on the Senate Floor.

b) AB 22 (Lowenthal), of the 2001-2002 Legislative Session, prohibited the retail sale of firearms from a residential dwelling with specific exceptions. Failed passage on the Senate Floor.

REGISTERED SUPPORT / OPPOSITION:

Support

Law Center to Prevent Gun Violence (sponsor)
California Chapters of the Brady Campaign to Prevent Gun Violence
Cleveland School Remembers
Coalition Against Gun Violence
Courage Campaign
Friends Committee on Legislation of California
Laguna Woods Democratic Club
Physicians for Social Responsibility (SF Bay Area)
Rabbis Against Gun Violence
Violence Prevention Coalition
Women Against Gun Violence
Youth Alive

Opposition

American Civil Liberties Union
California Association of Federal Firearms Licensees
California Pawnbroker's Association
California Sportsman's Lobby
Crossroads of the West Gun Shows
Firearms Policy Coalition
National Rifle Association
National Shooting Sports Foundation
Outdoor Sportsmen's Coalition of California
Safari Club International

Analysis Prepared by: Gabriel Caswell / PUB. S. / (916) 319-3744

Date of Hearing: April 5, 2016
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2495 (Eggman) – As Amended March 30, 2016

SUMMARY: Decriminalizes conduct connected to use and operation of an adult public health or medical intervention facility that is permitted by state or local health departments and intended to reduce death, disability, or injury due to the use of controlled substances. Specifically, **this bill**:

1) Allows state or local health departments to authorize the establishment and operation of an adult public health program intended to reduce death, disease, or injury due to the use and administration of controlled substances.

2) States that such public health program includes, but is not limited to, supervised consumption services where adults may consume preobtained controlled substances under the supervision of staff in a safe and hygienic facility.

3) Specifies that at a minimum these programs shall provide substance use disorder treatment either directly or through referral.

4) Provides that any person or entity, including, but not limited to, property owners, managers, employees, volunteers, and clients or participants, involved in the operation or utilization of such an adult public health or medical intervention program shall not be arrested, charged, or prosecuted for specified drug related offenses, or have his or her property subject to forfeiture, or otherwise be penalized solely for actions or conduct allowed by state or local health departments.

EXISTING LAW:

1) Provides that the possession of cocaine, cocaine base, heroin, opium, and other specified controlled substances listed in the controlled substance schedule, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in a county jail for not more than one year, except at specified. (Health and Saf. Code, § 11350(a).)

2) Makes the possession of methamphetamine and other specified controlled substances listed in the controlled substance schedule, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, punishable by imprisonment in a county for a term not to exceed one year, except as specified. (Health and Saf. Code, § 11377(a).)

3) States that any person who has under his or her management or control any building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, who

knowingly rents, leases, or makes available for use, with or without compensation, the building, room, space, or enclosure for the purpose of unlawfully manufacturing, storing, or distributing any controlled substance for sale or distribution can be punished by imprisonment in the county jail up to three years (Health & Saf. Code, § 11366.5, subd. (a).)

4) Specifies that any person who utilizes a building, room, space, or enclosure specifically designed to suppress law enforcement entry in order to sell, manufacture, or possess for sale any amount of drugs, as specified, shall be punished by imprisonment in the county jail for three, four, or five years. (Health & Saf. Code, § 11366.6.)

5) Provides that until January 1, 2021, as a public health measure intended to prevent the transmission of HIV, viral hepatitis, and other bloodborne diseases among persons who use syringes and hypodermic needles, and to prevent subsequent infection of sexual partners, newborn children, or other persons, the possession solely for personal use of hypodermic needles or syringes if acquired from a physician, pharmacist, hypodermic needle and syringe exchange program, or any other source that is authorized by law to provide sterile syringes or hypodermic needles without a prescription shall not be criminalized. (Health & Saf. Code, § 11364, subd. (c).)

6) Specifies that notwithstanding any other provision of law and until January 1, 2021, as a public health measure intended to prevent the transmission of HIV, viral hepatitis, and other bloodborne diseases among persons who use syringes and hypodermic needles, and to prevent subsequent infection of sexual partners, newborn children, or other persons, a physician or pharmacist may, without a prescription or a permit, furnish hypodermic needles and syringes for human use to a person 18 years of age or older, and a person 18 years of age or older may, without a prescription or license, obtain hypodermic needles and syringes solely for personal use from a physician or pharmacist. (Business & Prof. Code, § 4145.5, subd. (b).)

7) Classifies controlled substances in five schedules according to their danger and potential for abuse. Schedule I controlled substances have the greatest restrictions and penalties, including prohibiting the prescribing of a Schedule I controlled substance. (Health & Saf. Code, §§ 11054 to 11058.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Across the United States, heroin and opiate use and overdose is on the rise. Legislation in many states, including California, has improved access to sterile needles; broadened the use life-saving drug naloxone, which reverses the impact of opiate overdose; and continued the utilization of drug courts and drug diversion programs. However, with 125 Americans dying every day, and California hospitals treating one overdose every 45 minutes, we must continue to look for innovative strategies for addressing this epidemic.

"This bill would extend the harm reduction strategies we are already using in California, by enabling Local Health Jurisdictions to authorize programs to provide medical supervision to consumers of pre-obtained drugs, in order to save lives, connect individuals with vital

services like detoxification and housing, and reduce public nuisance and potentially hazardous litter. Research has shown these programs reduce overdose mortality, public injection, litter from drug use, and public nuisance all while increasing access to treatment, safe use behaviors, and entrance into detoxification services. In a single year the Canadian safe consumption facility made more than 2,000 referrals to community-based services: 37% were for addictions counseling, 12% for detoxification, 16% for community health centers, 4% for methadone maintenance therapy, and 3% for long-term recovery houses. The research shows no increase in the number of people who use drugs, drug trafficking and consumption crimes, or relapse rates. A simulation of the population of Vancouver suggests that their program has contributed to the prevention of 1191 HIV infections and 54 hepatitis C virus infections, and saved over 1300 years of life and $14 million."

2) **Supervised Injection Facilities and Drug Consumption Rooms:** This bill would allow state or local health departments to authorize public health programs such as supervised injection facilities and drug consumption rooms. Supervised injection facilities and drug consumption rooms are professionally supervised healthcare facilities where drug users can consume drugs in safer conditions. One of their primary goals is to reduce morbidity and mortality by providing a safe environment for more hygienic drug use and by training clients in safer drug use. The drug consumption room seeks to attract hard-to-reach populations of drug users, especially marginalised groups and those who use drugs on the streets or in other risky and unhygienic conditions. At the same time, they seek to reduce drug use in public and improve public amenity in areas surrounding urban drug markets. A further aim is to promote access to social, health and drug treatment facilities.
(http://www.drugwarfacts.org/cms/Safe_Injection#sthash.jb2AsCAE.dpbs)

3) **Increasing Opioid and Heroin Overdoses in California**: An August 17, 2015 article in the Sacramento Bee discussed the increase California hospitals have been seeing in opioid and heroin overdoses.

"California hospitals treated more than 11,500 patients suffering an opioid or heroin overdose in 2013, new state figures show. That's roughly one overdose every 45 minutes. It's also up more than 50 percent from 2006.

". . . Opioid overdoses resulting in ER visits and hospitalizations increased steadily nearly every year from 2006 to 2013, according to the Office of Statewide Health Planning and Development. Opioid deaths peaked in 2010 and have dropped slightly in following years, according to the California Department of Public Health.
(http://www.sacbee.com/siteservices/databases/article31324532.htm)

4) **California Allows Sale of Hypodermic Needles**: California has allowed the sale of hypodermic needles and syringes for a number of years. SB 1159 (Vasconcellos), Chapter 608, Statutes of 2004, established a five-year pilot program to allow California pharmacies, when authorized by a local government, to sell up to 10 syringes to adults without a prescription. Within several years there were hundreds of pharmacies, reaching a total of 650 by the suspension of the pilot. The pilot was suspended when statewide sales were authorized by SB 41 (Yee), Chapter 738, Statutes of 2011. SB 41 also required the Department of Public Health (DPH) to evaluate the results of the pilot project.

In July 2010, DPH published an evaluation of the pilot. The report had a number of findings. Among the most relevant were that an increased number of intravenous drug users (IDUs) reported using pharmacies as a source of their syringes. The availability of these sterile syringes seemed to impact behavior. A significantly lower portion of IDUs reported sharing of syringes and there was no evidence of increased unsafe discard of used hypodermic needles or syringes was observed in the Disease Prevention Demonstration Projects (DPDP). DPH reported that the level of injection of illegal drugs decreased among publicly funded HIV testing clients. The report also found that drug related crime remained stable in the jurisdictions that authorized DPDPs. Nevertheless, DPH concluded that the program appeared to be having the desired effect of augmenting access to sterile syringes.

There are a host of studies both domestically and internationally that provide evidence that provision of sterile hypodermic needles and syringes reduces HIV transmission. Public health experts, including the Centers for Disease Control and Prevention, have identified access to sterile syringes as one component of a comprehensive HIV prevention strategy designed to reduce HIV transmission among IDUs. In the last 10 years, a number of national organizations have endorsed deregulation to allow IDUs to purchase and possess syringes and needles without a prescription, including the American Medical Association, the American Pharmaceutical Association, the NABP, the National Alliance of State and Territorial AIDS Directors, and the Association of State and Territorial Health Officials.

5) **If This Bill Becomes Law, the Conduct Allowed would Still be Criminal Under Federal Law:** State authorization does not nullify federal drug laws. As a result state authorization for drug consumption rooms would not prevent them from being shut down by federal law enforcement agencies. Likewise, state authorization does not provide immunity from federal criminal proceedings, if federal law enforcement was inclined to pursue them.

   21 U.S.C. 844 and 21 U.S.C. 856 are two federal laws which prohibit behavior related to activity at a drug consumption room.

   21 U.S.C. 844 prohibits possession of drugs.

   21 U.S.C 856 prohibits:

   (a) knowingly open, lease, rent, use, or maintain any place, whether permanently or temporarily, for the purpose of manufacturing, distributing, or **using any controlled substance**;

   (b) manage or control any place, whether permanently or temporarily, either as an owner, lessee, agent, employee, occupant, or mortgagee, and knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or **using a controlled substance**.

   Those sections would criminalize the behavior of both the clients using the facilities and the owners or operators of the facilities.

   California already has existing law which is in conflict with federal drug law. California authorized medical marijuana in 1996 when Prop 215 was passed. Prop 215 was, and

continues to be, in conflict with federal drug law.

6) **Argument in Support**: According *to National Association of Social Workers, California Chapter*, "Supervised Consumption Services (SCS) have been utilized in Vancouver, Sydney and nearly 100 other locations around the world to reduce overdoes death and injury, decrease public health concerns like discarded syringes and public injection, reduce the transmission of infectious diseases, and provide entry to treatment for this most marginalized group. This bill removes certain legal barriers to the implementation and operation of public health and medical intervention programs intended to reduce death, disability, or injury due to the use of controlled substances."

7) **Argument in Opposition**: According to *The California Police Chiefs Association*, "As currently written, AB 2495 fails to provide for minimum regulations for supervised injection sites (SIS), such as hours of operation, resources for recovery, data collection, specialized training for employees, minimum safety requirements, and local authority over the zoning of SISs. Furthermore, AB 2495 does not require any evaluation or analysis of the impat of SISs on public health and safety. The SIS located in Vancouver frequently referenced by the proponents of this model was developed in 2002 as a focused research project. Unfortunately, nothing in AB 2495 requires the study of the impacts of an SIS in California.

   "Lastly, AB 2495 will put California law enforcement in the inappropriate position of enforcing a state law at odds with federal law. While the federal government has opined on the issue of state marijuana laws diverging from federal law, there has been no indication that the federal government will take a hands off approach surrounding SISs."

8) **Prior Legislation**:

   a) SB 41 (Yee), Chapter 738, Statutes of 2011, authorized a county or city to authorize a licensed pharmacist to sell or furnish 10 or fewer hypodermic needles or syringes to a person 18 or older for human use without a prescription.

   b) SB 1159 (Vasconcellos), Chapter 608, Statutes of 2004, established a five-year pilot program to allow California pharmacies, when authorized by a local government, to sell up to 10 syringes to adults without a prescription.

REGISTERED SUPPORT / OPPOSITION:

Support

Aids Project Los Angeles
A New Path
Asian American Drug Abuse Program
California Hepatitis Alliance
Centerforce
Harvey Millk LGBT Democratic Club
Homeless Health Care Los Angeles
Homeless Youth Alliance
Humboldt Area Center for Harm Reduction
Law Enforcement Against Prohibition

Legal Services for Prisoners with Children
Los Angeles Community Health Project
National Association of Social Workers, California Chapter
Needle Exchange Emergency Distribution
San Francisco AIDS Foundation
San Francisco Hepatitis C Task Force
S.T.O.P. Hepatitis Task-Force
Tarzana Treatment Centers

Opposition

Association for Los Angeles Deputy Sheriffs
California Association of Code Enforcement Officers
California College and University Police chiefs Association
California Police Chiefs Association
California Narcotic Officers' Association
California State Sheriffs' Association
Los Angeles County Professional Peace Officers Association
Los Angeles Police Protective League
Riverside Sheriffs Association

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

Date of Hearing: April 5, 2016
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2624 (Cooper) – As Amended March 17, 2016

SUMMARY: Requires the Legislative Analyst's Office (LAO) in consultation with the Commission on Peace Officer Standards and Training (POST) to conduct a study of community policing and engagement programs, efforts, strategies, and policies in the state, and to report its findings to the Legislature. Specifically, **this bill**:

1) Requires The LAO in consultation with POST to conduct a study to determine the effectiveness of community policing and engagement programs, efforts, strategies, and policies in the state, including, but not limited to, police activities leagues, neighborhood watch programs, and integrated policing.

2) Requires the LAO and POST to report its findings with regard to the study to the Legislature by December 31, 2018.

3) States that the report must comply with the requirements for submission of reports by state or local agencies.

EXISTING LAW:

1) Establishes POST. (Pen. Code, § 13500.)

2) Empowers POST to develop and implement programs to increase the effectiveness of law enforcement. (Pen. Code, §13503.)

3) Authorizes POST, for the purpose of raising the level of competence of local law enforcement officers, to adopt rules establishing minimum standards related to physical, mental and moral fitness and training that shall govern the recruitment of any peace officers in California. (Pen. Code, § 13510, subd. (a).)

4) Requires POST to conduct research concerning job-related educational standards and job-related selection standards to include vision, hearing, physical ability, and emotional stability and adopt standards supported by this research. (Pen. Code, § 13510, subd. (b).)

5) Requires POST to establish a certification program for peace officers, which shall be considered professional certificates. (Pen. Code, § 13510.1, subd. (a).)

6) Requires POST to undertake a feasibility study when a person or persons desire peace-officer status, or a person or persons desire a change in peace-officer designation or status. (Pen. Code, § 13540.)

7) Requires POST to develop regulations and professional standards for the operation of law enforcement agencies. (Pen. Code, § 13551.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 1289 helps California take inventory of community policing efforts, programs, policies and best practices statewide in order to reevaluate, recommit, and renew a focus on sustaining and enhancing trusting community-police relationships with all segments of the community."

2) **Community Policing**: "Community policing is, in essence, a collaboration between the police and the community that identifies and solves community problems. With the police no longer the sole guardians of law and order, all members of the community become active allies in the effort to enhance the safety and quality of neighborhoods. Community policing has far-reaching implications. The expanded outlook on crime control and prevention, the new emphasis on making community members active participants in the process of problem solving, and the patrol officers' pivotal role in community policing require profound changes within the police organization. The neighborhood patrol officer, backed by the police organization, helps community members mobilize support and resources to solve problems and enhance their quality of life. Community members voice their concerns, contribute advice, and take action to address these concerns. Creating a constructive partnership will require the energy, creativity, understanding, and patience of all involved." (See U.S. Department of Justice, Bureau of Justice Assistance, *Understanding Community Policing: A Framework for Action*, p. vii.)

   A recent report from the United States Conference of Mayors notes, "Recent events have demonstrated that, despite instituting community policing in many departments and realizing substantial reductions in the crime rate in many cities, mistrust between the police and the communities they serve and protect continues to be a challenge that must be addressed." (See *Strengthening Police Community Relations in America's Cities*, Jan. 22, 2015, <http://www.usmayors.org/83rdWinterMeeting/media/012215-report-policing.pdf>.)

   There are many examples of community policing taking place in California. This bill requires POST to conduct a study to determine the effectiveness of community policing and engagement programs, efforts, strategies, and policies in the state.

3) **POST**: POST was created by the legislature in 1959 to set minimum selection and training standards for California law enforcement. (Pen. Code, § 13500, subd. (a).) Their mandate includes establishing minimum standards for training of peace officers in California. (Pen. Code, § 13510, subd. (a).) As of 1989, all peace officers in California are required to complete an introductory course of training prescribed by POST, and demonstrate completion of that course by passing an examination. (Pen. Code, § 832, subd. (a).) POST is also tasked with developing and implementing programs to increase the effectiveness of law enforcement. (Pen. Code, § 13503, subd. (e).)

4) **Prior Legislation**: AB 1289 (Cooper) of the 2015 Legislative Session was similar to this bill in that it required the LAO to conduct a study on community policing programs. AB 1289 was substantially amended in the Senate to become a transportation related bill.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union

Opposition

None

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

Date of Hearing: April 5, 2016
Consultant: Matt Dean

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2721 (Rodriguez) – As Introduced February 19, 2016

SUMMARY: Requires the Department of Justice (DOJ) to develop and distribute an informational notice that warns the public about elder and dependent adult fraud and provides information regarding how and where to file complaints. The bill would also require the notice to be made available on the Internet Web site of the Attorney General.

EXISTING LAW:

1) Defines "elder" as "any person who is 65 years of age or older." (Pen. Code, § 368, subd. (g).)

2) States that upon conviction of any felony it shall be considered a circumstance in aggravation in imposing the upper term if the victim of an offense is particularly vulnerable, or unable to defend himself or herself, due to age or significant disability. (Pen. Code, § 1170.85, subd. (b).)

3) Specifies that any person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, fraud, or identity theft, with respect to the property or personal identifying information of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult, is punishable as follows:

   a) By a fine not exceeding $2,500, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding $10,000, or by imprisonment in the county jail for two, three, or four years, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding $950; or

   b) By a fine not exceeding $1,000, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding $950. (Pen. Code, § 368, subd. (d).)

4) Provides that any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft, embezzlement, forgery, fraud, or identity theft, with respect to the property or personal identifying information of that elder or dependent adult, is punishable as follows:

   a) By a fine not exceeding $2,500, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding $10,000, or by

imprisonment in the county jail for two, three, or four years, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding $950; or

b) By a fine not exceeding $1,000, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding $950. (Pen. Code, § 368, subd. (e).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Each year, thousands of California senior citizens find that they have become victims of various types of fraud. In some of these cases the crime is reported but most are not because many seniors are simply too humiliated to report the fraud or may not know where to turn to for help.

"The common thread that runs through almost all telemarketing and other scams is the demand for payment upfront. While California cannot constantly be there to keep our citizens safe, we can create an informational brochure to be distributed to retail outlets and banks that access money or sell financial instruments.

"AB 2721 will place vital information in locations where seniors typically access their funds when they are being scammed. The brochure will serve as a resource for seniors before they lose scarce retirement dollars and a source of information to let them know where to report fraud and scams.

"The California Department of Justice regularly issues consumer alerts warning consumers against scams. These alerts are generally public service announcements that are made in the media and on the DOJ website. Some past consumer alerts have included information on "A Roundup of Senior Citizen Scams Alert (grandparent scams, IRS, etc.) and Veteran Pension Poaching Scam Alert."

"These are general broadcast alerts to the general population as a whole and do not provide needed information at the location where seniors withdraw or access money during a scam.

"The Department of Justice, by developing and distributed this informational about scams will help prevent dependent adult fraud and provides information regarding how and where to file complaints. The bill would also require the notice to be made available on the Internet Web site of the Attorney General."

2) **Background**: According to background submitted by the author, "Each year, thousands of California senior citizens find that they have become victims of various types of fraud. In some of these cases the crime is reported but most are not because many seniors are simply too humiliated to report the fraud or may not know where to turn to for help.

"Consumer fraud perpetrated against senior citizens is a very serious issue; it creates fear, difficulty and financial problems for the elderly. Worst of all, it victimizes them and robs them of their savings and their peace of mind. A recent study found that around thirty percent of complaints about consumer fraud come from senior citizens, along with just over a quarter of identity theft complaints. According to a national consumer group nearly a third of all telemarketing fraud victims are age 60 or older. Studies by AARP show that most of older fraud victims don't realize that the voice on the phone could belong to someone who is trying to steal their money.

"Senior citizens are viewed as easy targets and the scams that target them come in many different forms. Some include scams about Medicare, funeral arrangements, and prescription drugs. In these scams, the perpetrator may pretend to be an official medical or government worker and ask for confidential details or payment. Many of these schemes are perpetrated through telemarketing and the Internet.

"The California Department of Justice regularly issues consumer alerts warning consumers against scams. These alerts are generally public service announcements that are made in the media and on the DOJ website. Some past consumer alerts have included information on "A Roundup of Senior Citizen Scams Alert (grandparent scams, IRS, etc.) and Veteran Pension Poaching Scam Alert."

"These are general broadcast alerts to the general population as a whole and do not provide needed information at the location where seniors withdraw or access money during a scam."

3) **Legislative History and Intent of Elder Abuse:** Specifically, elder abuse was punished as a crime in 1986; abuse of a dependent person was punished in 1984. (See Statutes of 1984, Chapter 144, Section 160.) Although the statute has been renumbered, the language originally stated:

"Any person, who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be placed in a situation in which his or her person or health is endangered is punishable by imprisonment in the county jail not exceeding one year or in state prison for two, three or four years." [Original Pen. Code § 368, subd. (a) as cited in *People vs. Heitzman* (1994) 9 Cal.4th 189, 194]

In 1994, the California Supreme Court construed Penal Code Section 368 as requiring a tort grounded duty of care to save the statute from being unconstitutionally vague. The Court in *Heitzman* stated:

"In 1983, the Legislature passed the state's first law focusing exclusively on those 65 years of age or older, requiring elder care custodians and other specified professionals to report instances of elder abuse. (Welf. & Inst. Code, § 9380- 9386, added by Stats. 1983, ch. 1273, § 2 and repealed by Stats. 1986, ch. 769, § 1.3, eff. Sept. 15, 1986.) That same year, Senate Bill No. 248, 1983-1984 Regular Session, was introduced at the request of the Santa Ana Police Department. An analysis of the bill prepared for the Senate Committee on the Judiciary indicates that the goal of the legislation was to aid in the prosecution of people who harm or neglect dependent adults. (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 248

(1983-1984 Reg. Sess.) p. 2.) According to this document, law enforcement agencies receiving reports concerning suspected abuse or neglect of dependent adults were having difficulty finding Penal Code sections under which they could prosecute such cases. (*Ibid.*) The solution proposed by the bill was to establish the same criminal penalties for the abuse of a dependent adult as those found in sections 273a and 273d for child abuse. (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 248.) When drafting the new legislation, the bill's author lifted the language of the child abuse statutes in its entirety, replacing the word 'child' with 'dependent adult' throughout *(internal citation omitted)*.

"After the statute was enacted late in 1983, several non-substantive changes were made. (Stats. 1984, ch. 144, § 160, p. 482.) Later, in conjunction with legislation designed to consolidate the two sets of conflicting reporting laws for elder abuse and dependent adult abuse, a 1986 amendment to section 368(a) made the section expressly applicable to elders as well as dependent adults. (Stats. 1986, ch. 769, § 1.2, p. 2531, urgency measure eff. Sept. 15, 1986.) [*Heitzman* at 245.]"

In 2004, AB 3095 (Committee on Aging and Long Term Care), Chapter 893, Statutes of 2004, related to conditions of probation when an offender is guilty of the crime of elder abuse, as specified. However, the Senate amended AB 3095 to strike "with knowledge that he or she is an elder or dependent adult" and instead included any person who "knows or reasonably should know that a person is an elder or dependent adult". This language is presumably broader than simple knowledge because it includes persons who reasonably should have known of the victim's status as an elderly or dependent person.

REGISTERED SUPPORT / OPPOSITION:

Support

None

Opposition

None

Analysis Prepared by: Matt Dean / PUB. S. / (916) 319-3744